

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JERMAINE DOCKERY, ET AL.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:13CV326WHB-JCG

PELICIA HALL, ET AL.

DEFENDANTS

**TRIAL TRANSCRIPT
VOLUME 38**

BEFORE THE HONORABLE WILLIAM H. BARBOUR, JR.
UNITED STATES DISTRICT JUDGE
APRIL 9, 2018
MORNING SESSION
JACKSON, MISSISSIPPI

REPORTED BY: CHERIE GALLASPY BOND

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17
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19
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21
22
23
24
25

TABLE OF CONTENTS

Exhibit D-1786

CLOSING ARGUMENTS:

Closing Argument by Ms. Johnson8

Closing Argument by Ms. Monju35

Closing Argument by Mr. Siler56

Closing Argument by Mr. Bentley82

Closing Argument by Ms. Johnson100

1 (Court Called to Order)

2 THE COURT: Good morning, ladies and gentlemen. We've
3 got lots of people in the courtroom this morning. I suspect
4 spectators are going to be disappointed, but we'll see what the
5 lawyers have to say.

6 We're here today for closing arguments. I gave both
7 sides an hour and a half for those closings. I assume that the
8 plaintiffs want to split your arguments into two parts,
9 retaining time for rebuttal after the defendants' argument. Is
10 that what you're planning?

11 MS. JOHNSON: Yes, Your Honor. We would ask to
12 reserve remaining time for rebuttal.

13 THE COURT: Who's going to argue first, and who's
14 going to finish, and who's -- and how are you going to split
15 your time?

16 MS. JOHNSON: Your Honor, the argument will be split
17 between myself and Ms. Monju. I will be beginning. Our
18 collective argument initially will be about an hour and 15
19 minutes, and we would reserve the remaining time for rebuttal.

20 THE COURT: All right. Do you want a warning on your
21 time, Ms. Johnson?

22 MS. JOHNSON: Do you mean --

23 THE COURT: Are you going first?

24 MS. JOHNSON: Yes, Your Honor.

25 THE COURT: And how much of your hour and 15 minutes

1 are you going to take?

2 MS. JOHNSON: I anticipate that my portion will be
3 about 40 minutes, Your Honor.

4 THE COURT: Do you want a warning at that time?

5 MS. JOHNSON: Sure, Your Honor. Actually, I can keep
6 up with the time.

7 THE COURT: All right. Any time that you use,
8 Ms. Monju -- the two of you can use the whole hour and a half
9 to begin with, but I'm just trying to see whether you want a
10 warning. Ms. Monju, what about your time? Do you want me to
11 call you at any time?

12 MS. MONJU: Your Honor, I can also follow along with
13 the time. Thank you.

14 THE COURT: And then what's the -- what -- how's the
15 defense going to do your time?

16 MR. SILER: Our intention is that I will handle half
17 the time, 45 minutes, and Mr. Bentley will handle 45 minutes.
18 I would like a warning at 35 minutes, Your Honor.

19 THE COURT: Thirty-five?

20 MR. SILER: Yes, sir.

21 THE COURT: All right. And --

22 MR. BENTLEY: Thirty-five minutes would be good for me
23 as well, Your Honor. Thank you.

24 THE COURT: Okay.

25 MR. SILER: Your Honor, we've got one final matter.

1 Exhibit D-178 was still remaining to be ruled upon. The
2 parties have gotten together and agreed upon a redacted
3 version. We have provided it to your deputy clerk, and at this
4 time we formally move for the admission of Exhibit D-178.

5 THE COURT: All right. Ms. Johnson, are you in
6 agreement with that?

7 MS. JOHNSON: Yes, Your Honor. We have no objection
8 to the redacted version.

9 THE COURT: D-178 will be received into evidence.

10 (Exhibit D-178 marked)

11 THE COURT: Yes, sir.

12 MR. BALABAN: Good morning, Your Honor. There was one
13 housekeeping matter from plaintiffs as well. Eric Balaban for
14 the plaintiffs.

15 Your Honor, there was -- on April 5th the court
16 ordered that -- sustained the objection of defendants regarding
17 the rebuttal case and allowed the plaintiffs to produce offers
18 of proof from the experts who would have testified. We've
19 given those to Ms. Lewis to be entered into the record, and
20 we've provided a copy to the defendants. We simply ask that
21 they be entered into the record in this case.

22 THE COURT: All right. They may be offered into the
23 record.

24 MR. BALABAN: Thank you, Your Honor.

25 MS. JOHNSON: Your Honor, the only other outstanding

1 matter are deposition designations. Plaintiffs have tendered
2 all of those to defendants, and defendant has reviewed most of
3 them. We're still waiting on some of those, and we would just
4 ask the court if we could submit those to the court later this
5 week. And Mr. Morisani will be able to speak to maybe a
6 deadline.

7 THE COURT: Yes, sir.

8 MR. MORISANI: Yes, sir. We can submit it to them
9 this week. We can try to submit it to them this afternoon
10 possibly.

11 THE COURT: All right. I probably am not going to be
12 here midweek. I have probably had enough of you people, and
13 I'm going to take a little break. But we can figure that out.
14 We can keep the record open to accommodate that.

15 MS. JOHNSON: If it's acceptable to Your Honor, I'm
16 happy to give -- to bring Ms. Lewis hard copies of those
17 designations once they are complete.

18 THE COURT: All right. Are we ready for closing
19 arguments at this time now?

20 MS. JOHNSON: Your Honor, I have a hard copy of the
21 presentation that plaintiffs intend to use during closing.
22 Could I hand it to Your Honor?

23 THE COURT: Yes, ma'am.

24 (Document Tendered to the Court)

25 MS. JOHNSON: And can we turn on the gallery monitors?

1 THE COURT: Yes. Ms. Johnson, you may proceed.

2 CLOSING ARGUMENT FOR THE PLAINTIFFS

3 MS. JOHNSON: Good morning, Your Honor. May it please
4 the court. Your Honor, plaintiffs have brought this action
5 because MDOC has failed to provide basic care to the 1200 men
6 who are incarcerated at the East Mississippi Correctional
7 Facility. MDOC chose to house its most vulnerable prisoners,
8 those who are seriously mentally ill, at EMCF, then contracted
9 the daily operations to for-profit companies and abandoned its
10 responsibility to ensure minimal constitutional requirements
11 are met. This court cannot allow these constitutional
12 violations to stand.

13 Throughout this trial, the court has heard testimony
14 from 19 prisoners, some of who have been at EMCF for years.
15 They have been housed at different pods -- on different pods at
16 different times, but their experience has been the same: They
17 are not safe, the environmental conditions are dangerous, they
18 do not receive adequate medical and mental health care. MDOC's
19 inaction puts them at substantial risk of serious harm.

20 As the Fifth Circuit noted in *Gates v. Cook*, the
21 constitution does not mandate comfortable prisons but neither
22 does it permit inhumane ones. Prison officials must provide
23 humane conditions of confinement. They must ensure inmates
24 receive adequate food, clothing, shelter, and medical care and
25 must take reasonable measures to ensure the safety of the

1 inmates.

2 Before we proceed to discuss the evidence related to
3 each of plaintiffs' claims in this matter, Your Honor, I would
4 first like to discuss the applicable legal standard. The
5 standard in this case is governed by the Supreme Court decision
6 *Farmer v. Brennan*, 511 U.S. 825.

7 First, there is an objective component. To satisfy
8 it, plaintiffs must show that prison officials' actions or
9 omissions have resulted in a substantial risk of serious harm.
10 The relevant inquiry under *Farmer* is not actual harm, Your
11 Honor. It is the risk of harm.

12 Prisoners are entitled to relief when a substantial
13 risk of harm is known and ignored by officials. In citing the
14 U.S. Supreme Court, *Gates* held that an Eighth Amendment
15 violation can be established by a combination of conditions of
16 confinement as long as they have a mutually enforcing effect
17 that produces a deprivation of a single identifiable human need
18 such as safety.

19 Your Honor, the second component under *Farmer* is a
20 subjective component. This component inquires into the prison
21 officials' state of mind in displayed deliberate indifference.
22 Your Honor, as you consider whether MDOC had the requisite
23 knowledge of the substantial risk of harm, it is a question of
24 fact that can be proven by inference through circumstantial
25 evidence. For instance, the court can infer MDOC's knowledge

1 of these conditions based on the documented number of assaults.
2 In addition, in deciding deliberate indifference, the court can
3 conclude that prison officials knew of the substantial risk of
4 harm because the very risk was obvious.

5 During the past five weeks, Your Honor has heard
6 substantial evidence from plaintiffs' experts as well as from
7 prison witnesses. The court does not need to solely rely on
8 plaintiffs' witnesses. The testimony by defendant and its
9 agents and employees include admissions of MDOC's knowledge of
10 deliberate indifference to the substantial risk of serious
11 harm.

12 MDOC believes that it should be absolved of
13 responsibility to the extent that these issues are created by
14 prisoners. However, the Fifth Circuit noted in *Beck v.*
15 *Lynaugh*, 842 F.2d 759, that is not the applicable standard.
16 Defendant will tell you that these problems happen everywhere,
17 but at EMCF, over the course of several years, these problems
18 have remained and even worsened with no intervention from MDOC.

19 Throughout this case, defendant has criticized
20 plaintiffs for what it has called a scattershot approach to
21 this case because of the multiple claims. However, there is
22 nothing that prohibits plaintiffs from bringing multiple claims
23 in a single suit. In here, the pervasive and systemic
24 unconstitutional conditions that exists at EMCF affect the
25 safety and well-being of the entire EMCF class.

1 This court certified the class in 2015 and then denied
2 defendants' motion to decertify because this is the very type
3 of case for which classwide injunctive relief is appropriate.

4 Your Honor, during the past few weeks, plaintiffs have
5 addressed nearly every aspect of prison operations, and it has
6 been necessary to give the court an accurate picture of the
7 depth of the failures and dysfunction at EMCF that create the
8 risk to the class. Those details and components of day-to-day
9 prison operations go directly to plaintiffs' seven claims.

10 Your Honor, I'd like to move to discuss the individual
11 claims at issue related to the safety and security and the
12 evidence that plaintiffs have presented. Following that,
13 Ms. Monju will discuss the medical and mental health claims.

14 Plaintiffs claims in this case are: The protection
15 from harm, the excessive use of force, nutrition, environmental
16 and sanitation conditions, isolation, medical, and mental
17 health.

18 Your Honor, I'll begin by discussing protection from
19 harm. As Your Honor sees on the screen, plaintiffs have
20 created this visual to depict each of plaintiffs' claims and
21 help the court understand the underlying conditions that relate
22 to them. These conditions, taken alone or in combination,
23 support a systemic constitutional violation. The court does
24 not need to find a constitutional violation of each of these
25 conditions individually to conclude plaintiffs have met their

1 burden on each claim.

2 Every prisoner at EMCF is subject to a substantial
3 risk of harm because of MDOC's failure to protect them. EMCF
4 is dangerous as evidenced by the daily realities: Assaults,
5 gang members who control daily operations, weapons, officers
6 who fail to perform their basic job functions, and inadequate
7 staffing levels.

8 Your Honor, at EMCF, the rate of assault is extremely
9 high. They occur every day on every unit in hallways and
10 common areas. Here Your Honor can see the statistics from 2016
11 and 2017 related to the rate of assaults at EMCF. Even relying
12 on the assaults data that Your Honor heard from defendants'
13 expert Mr. McGinnis, which was incomplete, the rate of assaults
14 at EMCF in 2016 was ten times higher than the rate of assaults
15 that plaintiffs' corrections experts saw in his system. Warden
16 Shaw and defendants' experts agreed that you cannot detect all
17 assaults. So the actual number of prisoners and staff who are
18 assaulted at EMCF is higher than these numbers.

19 More than the risk of harm, Your Honor, at EMCF,
20 MDOC's failure to protect has resulted in actual harm. Dozens
21 of prisoners have been stabbed, brutally beaten, and suffered
22 from broken bones.

23 Your Honor, next I'd like to talk about the control by
24 gang members. The staff --

25 THE COURT: Doesn't -- don't assaults happen in every

1 prison and particularly in prisons handling mental health
2 patients?

3 MS. JOHNSON: Yes, Your Honor.

4 THE COURT: You've got all these statistics, and I
5 don't know how to -- you went through lots of time explaining
6 and dividing up in what's an assault and what's not an assault
7 and all of the statistics.

8 Men confined in a jail are going to fight with each
9 other. Those are assaults. If there are violent men in
10 prison, the guards are going to have to control them some way.
11 They are going have to use pepper spray or else they're going
12 to have to wrestle them to put shackles on them. Those happen
13 in every prison, good prisons, and bad prisons.

14 What is the difference in an assault for statistical
15 purposes and an assault which -- of some kind that is to be
16 expected in any prison? That's -- the differences between the
17 two sides have been very sharp, and the plaintiffs seem to
18 claim that every time a prisoner has some kind of use of force,
19 whether it's violent -- that should not occur or whether it is
20 a matter of wrestling him and getting -- to put shackles on
21 him, where is the dividing line?

22 MS. JOHNSON: Your Honor, just so -- assaults are when
23 prisoners may assault other prisons or staff members. The use
24 of force incidents that we've discussed are when staff members
25 use physical force or a chemical agent against a prisoner.

1 And Your Honor is correct. Assaults do happen in
2 every prison, but what is important at EMCF is the high number
3 of assaults that have happened year after year and the failure
4 of MDOC and the staff at EMCF to take action in order to reduce
5 those, as we discussed based on staffing concerns that other
6 prisoners control day-to-day functions at EMCF. There is a
7 substantial risk of harm to prisoners presented by these
8 assaults, and there has been no action by MDOC in order to
9 address that risk.

10 THE COURT: All right.

11 MS. JOHNSON: Your Honor, the staff at EMCF have
12 abdicated their day-to-day functions to gang members and
13 prisoners. An e-mail from the contract monitor, Ms. Thomas,
14 documented serious concerns about gang members who are allowed
15 to run the segregation units. Your Honor, the segregation
16 units are considered what is called a sensitive work area.
17 Gang members should not even be allowed to work there, let
18 alone exert control over other prisoners.

19 Further, Ms. Thomas in 2015 sent three different
20 e-mails regarding specific prisoners that she noted had the
21 ability to control units throughout the prison. And nearly
22 three years later, Your Honor, during this trial, one of those
23 prisoners still remained on the same unit she had identified
24 where he exerted control.

25 THE COURT: The defendants are going to argue that

1 that has changed substantially since you collected your
2 depositions and videos and that the violence is down
3 considerably and that the guards are doing a much better job.
4 Where's -- where's the dividing line?

5 MS. JOHNSON: Your Honor, the defendants have put
6 forward very little evidence to rebut the statistics and
7 evidence that plaintiffs have regarding the numbers and
8 practices at EMCF. Further, as Ms. Monju will speak to in more
9 detail, this voluntary cessation that defendants may say or
10 these improvements that they cite are insufficient to avoid a
11 liability finding and an Eighth Amendment violation because of
12 those conditions could reoccur.

13 THE COURT: Any instance can reoccur. That's kind of
14 a statement without a whole lot of meaning.

15 MS. JOHNSON: And, Your Honor, excuse me. Not the
16 specific incidents but the systemic violations and problems
17 related to violence as we're speaking about now.

18 THE COURT: All right.

19 MS. JOHNSON: In fact, Your Honor, as you may recall,
20 the control of gang members at EMCF remains such a critical
21 issue that Ms. Thomas felt she could not identify those gang
22 members in open court because she feared for her safety when
23 she returned to work. You've heard testimony from nearly every
24 prisoner that gangs control daily operations such as where
25 prisoners are housed and passing out food.

1 Next, Your Honor, I'd like to discuss the weapons and
2 contraband at EMCF. You heard Warden Shaw talk at length about
3 the measures that the facility has taken to interdict
4 contraband: Putting up netting around the perimeter, adding
5 scanners at the front entry, a K-9 unit that's there twice a
6 month. But these additions were made in 2014, and if you look
7 at the facility's own data, Your Honor, the number -- the
8 amount of contraband remains extremely high.

9 At some point, MDOC should have recognized that these
10 measures were woefully inadequate to address the risk of harm
11 and demanded further action. The prisoners remain awash in
12 contraband. The facility documents show that cell phones,
13 knives, hacksaw blades, marijuana, spice, and other drugs are
14 found frequently. Here Your Honor can see statistics regarding
15 weapons and contraband that were found at EMCF in 2015, 2016
16 and 2017.

17 And as Your Honor has heard testimony, we do agree
18 that not all contraband can be found. So the actual numbers at
19 EMCF are higher than even these reported statistics, and again
20 the risk of harm presented by this amount of contraband goes
21 directly to the injury to plaintiffs.

22 THE COURT: Your illustration there says that the 2017
23 contraband is down almost 15 percent from 15 and 16.

24 MS. JOHNSON: Your Honor --

25 THE COURT: We've also heard what they've been doing.

1 We've also heard from all of your expert -- experts on prisons
2 that there's nothing that can be done about contraband. It's
3 in every prison. It's a matter of trying to control it.
4 What's -- where does it get to be unconstitutional?

5 MS. JOHNSON: Well, Your Honor, just to point out, the
6 statistics from 2017 only include the first half of the year
7 because that's when discovery ended. So those statistics
8 represent January through June.

9 THE COURT: Well, that makes it about even then. All
10 right.

11 MS. JOHNSON: And, Your Honor, that while contraband
12 exists at every prison, these rates, as you've heard from
13 plaintiffs' experts, Mr. Vail, are extraordinarily high
14 compared to other prisons. And while efforts can and should be
15 made -- they must be made to reduce contraband -- the efforts
16 that EMCF cites have been ineffective and yet they've done
17 nothing else to address the risk of harm.

18 And, Your Honor, I just want to note that these
19 weapons figures do not even take into account the weapons of
20 opportunity such as mops and broomsticks that Your Honor saw
21 used during a March 2017 riot.

22 Your Honor, the next thing I would like to discuss is
23 the failure of officers to perform their most basic job
24 functions. This issues has been confirmed by EMCF's own
25 documents as well as testimony during this trial. For

1 instance, one repeated issue documented by the contract
2 monitor, Ms. Thomas, is that officers failed to stay on their
3 assigned posts.

4 If officers are not where they are supposed to be, how
5 can they ensure that prisoners are not engaged in misconduct
6 and that prisoners are not being injured? On multiple
7 occasions, the contract monitor observed staff sitting around
8 and socializing instead of observing prisoners. And, Your
9 Honor, imagine that you need assistance and you're locked in a
10 cell and you're having a medical emergency.

11 Do you know how Deputy Warden Hogans told you that you
12 would have to get a staff member's attention if you were in
13 your cell? He told this court that you would have to make
14 enough noises to get the picket officer's attention. That's
15 the same picket officer Your Honor saw that could be 30 to
16 40 yards away from a cell and through up to three locked steel
17 doors.

18 Defendants' expert, Tom --

19 THE COURT: They're going to argue to me that that has
20 changed with the change of management at the prison,
21 specifically the new warden and that that should not have been
22 the way the prison was run and that it is much better now.
23 What do I believe? How do I give them credit for making some
24 change?

25 If I agree with you, which I do to a large extent, it

1 was -- seems like in '16 and '17 the inmates were running the
2 prison with the old saw that you hear. But it appears that
3 things either have changed or are changing. How do I -- how
4 does a judge in my position handle that situation?

5 MS. JOHNSON: Well, Your Honor, I'd like to note that
6 Warden Shaw is far from new. He's been back at the prison
7 since December 2015. And Warden Hogans' representation about
8 having to make noise to get an officer's attention is not
9 something he described as a former practice, Your Honor.
10 That's a current practice. There is no way for prisoners to
11 get the attention of officers.

12 And as the court looks at the body of evidence, Your
13 Honor, the system of changes that plaintiffs have presented
14 evidence on cannot be changed in a week or a month. These are
15 issues that have persisted for years. And unless there are --
16 to the extent that the court has seen improvements, the court
17 can include those improvements and confirm that they will
18 continue in what it orders in the form of a remedy. But, Your
19 Honor, the case law is settled that defendant cannot escape
20 liability by making changes on the eve of trial in order -- in
21 an attempt to show that these conditions have been addressed.

22 Your Honor, next I want to briefly talk about
23 defendants' expert, Tom Roth. He identified EMCF as an
24 indirect supervision prison, but because of the routine
25 failures of staff that the court has heard about, the failure

1 of staff to remain on their posts, it virtually results in a
2 no-supervision prison.

3 You've heard testimony about the importance of
4 elementary security principles such as counts and security
5 checks. And here, Your Honor, again for over two years the
6 contract monitor found the defendant in noncompliance with
7 being able to conduct counts. And yet during that very same
8 time frame, Your Honor, the prison reduced its preservice
9 training on counts from an hour to 30 minutes. They were not
10 doing counts well, and then offered even less training on them.

11 The court has also heard a lot of testimony about
12 locks in this case. It's an important measure for officers to
13 be able to securely place somebody in their cell and know that
14 they are going to stay there.

15 Defendants' lock expert, Mr. Stonehouse, testified
16 that he inspected locks on Units 1, 5 and 6, and the locks
17 appeared to be installed and maintained properly. But even
18 during his inspection, he found that some of the sliding doors
19 on 5 and 6 had been jammed by prisoners. And, yes, he
20 testified and told this court that prisoners at other
21 facilities also jam doors, but when plaintiffs' counsel
22 inquired and asked, "So how is it that at every other prison in
23 America doesn't have inmates just running wild all the time,"
24 Mr. Stonehouse responded, "Their staff takes measures to
25 correct the problem." At EMCF, they do nothing.

1 Your Honor, even more so, you've seen facility
2 documentation of routinely unsecured doors. You saw the
3 March 2017 riot where dozens of prisons were out of their cells
4 during an MDOC mandated facilitywide lockdown. And when Warden
5 Hogans testified about that incident and that there was an
6 investigation, that investigation did not include how so many
7 prisoners were able to exit their cells.

8 Your Honor, next I'd like to speak about the overall
9 staffing problem at EMCF. Operating a prison requires enough
10 officers to perform the daily tasks. On many days, EMCF does
11 not even have enough officers to fill the mandatory posts.
12 Your Honor has seen many examples like this shift roster on the
13 screen now. And each of the red highlighted places shows a
14 mandatory position on this day that was vacant. This is not an
15 anomaly, Your Honor. This is an example of numerous shift
16 rosters in which mandatory posts are vacant.

17 In addition, as the court heard plaintiffs' expert,
18 Mr. Vail, testify, the staffing model at EMCF places officers
19 outside of the pods where they're unable to supervise and
20 directly interact with prisoners. This adds to the
21 dangerousness of the prison. It creates a substantial risk of
22 harm to prisoners whereas you have seen there are instances
23 where staff are delayed or failed to respond to assaults that
24 happened in plain site.

25 THE COURT: Is it the plaintiffs' position that there

1 should be an officer or more than one officer inside the pods
2 at all times?

3 MS. JOHNSON: Yes, Your Honor. That was Mr. Vail's
4 recommendation that depending on the custody level, there may
5 need to be -- there should be at least one officer in the pods,
6 as is the practice at other prisons. And as the court may
7 recall, defendants' own expert's only -- only comment as to why
8 that could not happen was that officers didn't have what he
9 called a work area in the pod. Your Honor, that's something
10 defendants could easily create by putting an area in each pod
11 where officers could complete their paperwork and tend to their
12 other tasks while actively supervising prisoners.

13 THE COURT: It would -- I did not understand this from
14 any of the experts as to what proper staffing would actually
15 be. There's lots of discussion about it but not much in the
16 way of direct information. As I understand it, the expert --
17 none of the experts argued with the fact that particularly
18 prisoners in Unit 5, the mentally disturbed, who need go to
19 medical or to mental health and so forth needed to be escorted
20 by guards, staff members, and that they needed to have two of
21 them take one person -- every one person down to another part
22 of the building.

23 Nobody was clear about whether those would be officers
24 on the floor of the pod or inside the locked doors. The
25 pods -- each unit has four pods. So that would take eight

1 full-time officers all the time plus escort officers. Is that
2 what the plaintiffs are recommending to the court that is
3 proper staffing?

4 MS. JOHNSON: That's part of the staffing issue, Your
5 Honor. And I think --

6 THE COURT: That's not my question. I asked you a
7 direct question. Is that the minimum amount of staffing for
8 each unit in the place, or is it different for Unit 5 from the
9 other units?

10 MS. JOHNSON: It would vary, Your Honor, based on the
11 classification, and that was Mr. Vail's recommendation.

12 THE COURT: Is two per pod in Unit 5 what the
13 plaintiffs are arguing is minimum staffing?

14 MS. JOHNSON: Yes, Your Honor. But there would need
15 to be additional officers that might be referred to as utility
16 or escort officers so that prisoners can go to appointments and
17 to showers and recreation.

18 THE COURT: All right. So it's a minimum of eight
19 officers on a four-pod unit plus escort officers.

20 MS. JOHNSON: Yes, Your Honor.

21 THE COURT: And, of course, the picket officers --
22 officer. Is that correct?

23 MS. JOHNSON: Yes, Your Honor.

24 THE COURT: And how many more people does that add to
25 the shift -- the shift roster --

1 MS. JOHNSON: Your Honor, if you see --

2 THE COURT: -- for the whole prison?

3 MS. JOHNSON: If you see on the right-hand side for
4 Unit 5, currently there are two officers assigned per pod, but
5 all of those posts are not filled, and the additional escort or
6 utility officers, that's not a mandatory post. And so that
7 position may or may not be filled.

8 The staffing that plaintiffs are suggesting are all
9 mandatory. And as you might recall, Mr. Donald said you need
10 eight or nine staff members on Housing Unit 5 to be able to run
11 it during at least the day shifts.

12 THE COURT: All right. I'm trying to get a direct
13 answer as to what the plaintiffs say is an absolute minimum for
14 Unit 5 for staffing on any shift. And if it can be less for
15 the third shift, I want that answer. But I'm not getting it.
16 What is the minimum number of staff that should be on the day
17 shift or the first shift for Unit 5?

18 MS. JOHNSON: Two officers per pod plus additional
19 officers as floaters or escort officers and a picket officer.
20 And on the units that are less -- the classification is minimum
21 or medium, one officer per pod. Housing Unit 5 because it has
22 segregation needs more officers than the other units.

23 THE COURT: And this shift roster for November 1st of
24 2016 has how many -- how do I read this? How do I -- if I were
25 to find for the plaintiffs and grant injunctive relief, how

1 would I go about trying to fill in the blanks here and order
2 that X number of employees should be in the prison for the
3 first shift of every shift?

4 MS. JOHNSON: Your Honor, the beginning of that
5 analysis would be that based on the custody level there should
6 be a certain number of officers per pod.

7 THE COURT: Custody level is going -- I said for the
8 whole first shift. The custody level is going to be the same
9 today, tomorrow, and the next day. They're going to be
10 different custody levels for different units in the prison, but
11 how do I add all of that up and say, "All right. There needs
12 to be 20 employees in that building at all times, there need to
13 be 60, or there need to be 100 on the first shift"? Have you
14 given me any information like that?

15 MS. JOHNSON: Yes, Your Honor. We believe that on
16 first shift based on the current population at EMCF, every
17 close custody unit zone pod would require two officers. And so
18 based on this shift roster, Your Honor, that would be all of
19 Housing Unit 5, Housing Unit 6 Delta and Housing Unit 3
20 Charlie. Those would require two officers in the pods.

21 For the other zones, Your Honor, there would need to
22 be at least one floor officer in each of the pods. I don't --
23 in addition to the supervisory staff. I don't have a total
24 number off the top my head, but that is a calculation that
25 plaintiffs could provide in our posttrial briefing.

1 THE COURT: I don't know how you expect me to produce
2 a number out of the blue if you haven't produced it to me.
3 That's what I'm asking. You've also got to have workers in the
4 kitchen. You've got to have the people teaching classes.
5 You've got to have -- as well as other guards. All of that
6 goes into it.

7 MS. JOHNSON: It does, Your Honor. And to be clear,
8 this shift roster reflects correctional officers, not teachers
9 or program staff that are calculated separately.

10 And, Your Honor, part of the staffing problem at EMCF
11 is that there's not enough staff. And then even the staff who
12 are there, they're not used or deployed properly throughout the
13 prison in order to cover mandatory posts and ensure that these
14 basic functions are happening on a regular basis.

15 THE COURT: All right. Well, I asked one of the
16 expert witnesses did he find anything right about the prison,
17 and he never did answer that question because he had lots of
18 prongs. If I'm going to produce a -- something that moves from
19 constitutional to -- unconstitutional to constitutional, are
20 y'all going to give me a plan --

21 MS. JOHNSON: Your Honor, that's --

22 THE COURT: -- so that I can compare it with what's
23 there, or are you just going to say, "Well, there needs to be
24 two on the floor"?

25 MS. JOHNSON: Well, Your Honor, that was a

1 recommendation by plaintiffs' expert. But in addition, one of
2 the remedies the court can order is a proper staffing analysis
3 that would give the court that number from a subject matter
4 expert.

5 THE COURT: So the answer is you are not going to give
6 me a specific number.

7 MS. JOHNSON: Your Honor, the number I've given
8 related to the housing units.

9 THE COURT: You can do whatever you wish. I'm just
10 telling you that -- what would be helpful to me, and you
11 apparently are not going to do that, but go ahead. Go ahead
12 with your argument. Excuse me for interrupting you.

13 MS. JOHNSON: Your Honor, related to the staffing
14 issue, I think the housing unit staffing is a place where
15 plaintiffs have provided the specific recommendation of at
16 least one officer in each pod. And beyond that, plaintiffs
17 could provide --

18 THE COURT: Don't repeat that to me. I've heard that
19 about four times now, and I've asked you a specific question
20 about total number of employees that need to be there, and you
21 are not prepared to answer that. So go ahead with your
22 argument somewhere else.

23 MS. JOHNSON: Thank you, Your Honor. Your Honor, the
24 issues that have been discussed related to plaintiffs'
25 protection from harm claim and MDOC's failure to respond to

1 them demonstrated deliberate indifference by MDOC over the past
2 several years despite its knowledge of the risk of harm to the
3 prisoners at EMCF. The contract monitor has addressed those
4 areas -- has identified these issues but nothing has been done
5 to address them.

6 Next, Your Honor, I'd like to discuss plaintiffs' use
7 of force claim.

8 THE COURT: I believe you've got about five minutes
9 left, but I'm -- I don't know that I made correct notes on when
10 you started.

11 MS. JOHNSON: That's about right, Your Honor. I will
12 be moving quickly through the rest of the claims. Your Honor,
13 as plaintiffs have presented evidence related to the use of
14 force, one of the key problems is staffs' failure to comply
15 with MDOC policy. There's both unavoidable -- there's
16 avoidable and unnecessary use of force at EMCF, the prison that
17 houses most severely mentally ill prisoners.

18 One of the critical aspects of use of force, Your
19 Honor, must be deescalation. And it means, as the court has
20 heard testimony, that mental health staff should come during a
21 planned use of force and attempt to speak to the prisoner. As
22 Your Honor has heard from the warden and from Christopher
23 Dykes, that has not always happened.

24 Mental health counselors make a determination as to
25 whether or not a prisoner is suffering from mental health

1 systems without ever laying eyes on them in many cases. And as
2 Your Honor heard mental health counselor Pickering testify,
3 prisoners can deteriorate and decompensate while in
4 segregation, even those that don't have preexisting mental
5 health conditions, which is why deescalation is so critical in
6 use of force.

7 THE COURT: Is the plaintiffs' position that solitary
8 confinement is never proper?

9 MS. JOHNSON: That has not been our position, Your
10 Honor. Our position related to isolation is that it does have
11 severe harmful effects and that it's un- -- it should be used
12 for a very limited amount of time. And if it is needed for
13 lengthy periods of time -- Your Honor, at EMCF it's used for
14 months and even years -- that there should be units such as
15 Dr. Kupers discussed that are restrictive to meet the security
16 needs but also allow an environment where prisoners are not
17 subject to such severe isolation.

18 Additionally, Your Honor, the practice across the
19 country has been to move toward a trend where prisoners with
20 severe mental illness are categorically excluded from solitary
21 confinement. You heard plaintiffs' experts testify about that
22 and defendants' experts Ken McGinnis also agreed that seriously
23 mentally ill prisoners should not be housed in segregation
24 units like Unit 5 at EMCF. And this trend is happening in many
25 other systems because --

1 THE COURT: For more than 30 days or less -- one of
2 the experts agreed that there's got to be a use of solitary
3 confinement for mental health people for some period of time.
4 I think he said a maximum -- he finally agreed to a maximum of
5 either 20 or 30 days. I have forgotten which.

6 I never understood how you were going to work a
7 severely mentally deranged prisoner down enough in a relatively
8 short period of time to let him out of solitary. It was not
9 clear to me, and I still don't know what the argument of
10 plaintiffs is as to whether there needs to be -- whether you
11 recognized that the prison has to have some solitary
12 confinement for -- particularly for these severely mentally
13 affected prisoners, or do you take them out after X number of
14 days if you're going to have it, and then what do you do with
15 them? How do you control the ones that simply have to be
16 controlled, that are dangerous, as opposed to some that
17 probably everyone would agree that take them out after a
18 certain period of time and tell them to behave themselves and
19 if they don't -- you have to have some way to punish them and
20 you put them back in? What's the solution?

21 MS. JOHNSON: Well, Your Honor, prisoners who are
22 severe -- seriously mentally ill, the consensus is they should
23 not be placed in solitary confinement but they can be placed in
24 other restrictive housing which would allow the security
25 measures that Your Honor is referencing as necessary for safety

1 but would ensure that there's programming and treatment and
2 services so that they don't further decompensate.

3 As Your Honor has heard, prisoners who are in solitary
4 experience severe consequences such as paranoia, self-injurious
5 behavior such as cutting, and those symptoms are worsened in
6 solitary.

7 THE COURT: Yes, ma'am. There are all kinds of horror
8 stories. But there are all kinds of horror stories in private
9 facilities that people pay a lot of money for where the
10 people -- the patients are getting what you would classify as
11 supposedly much better care than they are in this prison or any
12 other prisons, for that matter. Where -- how do you handle
13 these people? You can't just turn them loose on the street.

14 MS. JOHNSON: You provide programs and services and
15 treatment, Your Honor. And that's what --

16 THE COURT: It doesn't work in many cases. Programs
17 and treatment and services do not work. You've got to simply
18 be able to house them in humane conditions. And I'm trying to
19 find the line, and I don't know how to find it. That's what
20 I'm asking you.

21 MS. JOHNSON: Part of those humane conditions would
22 include opportunities for interaction as appropriate, Your
23 Honor. There are restrictive housing settings
24 in corrections --

25 THE COURT: Is an hour in the cage by himself outside

1 of his cell every day adequate? Is an hour and a half? Is it
2 two hours? Is it half the day? How do you gage what's going
3 on in somebody's mind, particularly if they have severe mental
4 illness? Where -- that's to be done?

5 MS. JOHNSON: Your Honor, many systems because of the
6 need for an individual determination have a robust assessment
7 before prisoners are placed in segregation and assess them
8 throughout their time in segregation. And so, Your Honor, at
9 EMCF that doesn't happen. And so if a prisoner is placed in
10 segregation, there should be a comprehensive assessment, and
11 they should be monitored and checked by the appropriate mental
12 health and security staff to determine whether they've
13 exhibited and can be released from solitary or whether what
14 additional services may be needed to ensure that they're --

15 THE COURT: Where does the state of Mississippi find
16 enough competent psychiatrists who are willing to come to a
17 rural area outside of a relatively small Mississippi town to
18 man a facility like this?

19 MS. JOHNSON: Well, Your Honor, the department has
20 designated EMCF to be the prison, and it could change that
21 designation if it thought that a prison, per se, closer to
22 Jackson, such as the one in Rankin County, would be better able
23 to staff and provide adequate mental health services. It
24 cannot hide behind and fail to provide those services simply
25 based on the location of the prison. It has to make -- it has

1 to take steps.

2 THE COURT: But suppose competent mental health
3 people, psychiatrists particularly, counselors of high quality,
4 nurses of high quality, we have problems throughout the state
5 in private facilities finding adequate doctors and nurses to
6 staff. How does the state do this as a practical matter --

7 MS. JOHNSON: Your Honor, as a practical --

8 THE COURT: -- to get to the quality that you would
9 like to have which is arguably more than constitutional
10 requirements?

11 MS. JOHNSON: Your Honor, states across the country
12 engage in recruiting practices, other incentives to maintain a
13 work force. There is no constitutional exception to providing
14 basic care based on the work force. MDOC would have to take
15 the necessary measures and by its contractor ensuring that
16 those positions are staffed and if not making the necessary
17 adjustments to ensure that it can provide basic care.

18 THE COURT: All right. I think you've used your time.

19 MS. JOHNSON: I have, Your Honor. If I could just
20 briefly close on the safety and security issues. Your Honor,
21 in total, plaintiffs' safety and security issues include our
22 claims regarding protection from harm, excessive use of force,
23 nutrition, sanitary environment, as well as solitary
24 confinement. As I've discussed, Your Honor, MDOC demonstrated
25 deliberate indifference as it relates to these issues. They've

1 been well documented for years and passed up the MDOC chain of
2 command. For instance, Tony Compton, the director of private
3 and regional facilities, acknowledged that he's responsible for
4 the safety and security operations at the private prison such
5 as EMCF. And at least as relates to counts, he admitted that
6 he's done nothing with this information.

7 Your Honor also heard from Jerry Williams, a named
8 defendant who's the deputy commissioner of institutions, who
9 had testified that problems should not go unfixed week after
10 week or month after month as has been the case at EMCF.

11 THE COURT: If you want Ms. Monju to testify, you had
12 better leave her some time. Not testify; to argue.

13 MS. JOHNSON: Your Honor, I would just assert that the
14 commissioner has also been aware of these issues. The
15 litigation has existed since she has been in office, and MDOC
16 has acted with deliberate indifference to plaintiffs' safety
17 and security claims.

18 And I will turn the rest of my time to Ms. Monju.

19 THE COURT: Thank you. Ms. Monju, can we agree with
20 how much she has left you?

21 MS. MONJU: Yes, Your Honor, we'll check that. We
22 have 45 minutes remaining, Your Honor, out of the hour and a
23 half. If I could have a warning at 35 minutes, that would be
24 appreciated.

25 THE COURT: All right.

1 CONTINUED CLOSING ARGUMENT FOR THE PLAINTIFFS

2 MS. MONJU: Good morning, Your Honor, and may it
3 please the court.

4 I'll be speaking about plaintiffs' final two claims
5 regarding medical and mental health care at EMCF. I'll be
6 doing this in a fairly summary form so if there is anything I
7 can elaborate on for Your Honor, please just let me know.

8 With respect to plaintiffs' medical claim, plaintiffs
9 seeks relief on behalf of the entire EMCF class. The standard
10 is the same for plaintiffs' medical claims as it is for
11 plaintiffs' other claims. Prison officials violate the Eighth
12 Amendment when they are deliberately indifferent to a
13 prisoner's substantial risk of serious harm. That includes
14 deliberate indifference to serious medical needs.

15 Plaintiffs have provided overwhelming evidence that
16 satisfies this standard. For example, plaintiffs' experts,
17 Dr. Marc Stern and Madeleine LaMarre, testified that the
18 medical system at EMCF is broken. Plaintiffs also presented
19 substantial testimony from prisoners that they are routinely
20 denied access to medical care.

21 But you needn't take their word for it. Plaintiffs
22 have introduced hundreds of defendants' own documents
23 corroborating this testimony. For example, plaintiff submitted
24 continuous quality improvement, or CQI, reports, tracking
25 failings in care. They've submitted medical records and

1 internal audits all showing that care at EMCF fails again and
2 again.

3 All of this testimony and all of these documents show
4 that deficiencies in medical care at EMCF are longstanding,
5 pervasive, and obvious and that they are well known to MDOC.

6 Before I discuss those specific deficiencies, Your
7 Honor, I would be remiss to ignore defendants' response to this
8 evidence. Defendants did not designate a single expert to
9 respond to plaintiffs' allegations regarding the adequacy of
10 medical care at EMCF. They did not submit a single document.

11 Instead, defendants' solely called their new
12 physician, Dr. Patrick Arnold, to testify about care at EMCF.
13 But Dr. Arnold admitted that he has no idea what care was like
14 at EMCF prior to August 2017. He admitted that he doesn't
15 supervise nurses who provide the vast majority of care at EMCF.
16 And he admitted that he knows so little about the conditions at
17 EMCF that he's never even been to the housing units which are
18 quite literally down the hall from his office. Dr. Arnold is
19 simply not a rebuttal to plaintiffs' evidence.

20 I'll now discuss the -- some of the systemic
21 deficiencies in the medical care at EMCF. Your Honor, first,
22 MDOC denies prisoners timely access to episodic or nonurgent
23 care. As Your Honor learned, prisoners access episodic care
24 through something called a sick call request form. These forms
25 are supposed to be accessible and confidential, but at EMCF

1 they are neither.

2 MDOC's own contract monitor reports reflect that as a
3 general matter sick call forms are not available on all the
4 housing units. And as Your Honor saw at EMCF, prisoners cannot
5 drop off their sick call request forms in the locked boxes
6 confidentially because those boxes are behind a locked door.
7 Prisoners have to give those forms to guards, destroying
8 confidentiality and making it more likely that prisoners won't
9 report their serious medical needs and won't get care.

10 After sick call forms are placed in the box, they are
11 supposed to be triaged within 24 hours. That's because if
12 prisoners have serious medical needs, they need to be seen
13 quickly. But, again, MDOC's own documents show this isn't
14 happening.

15 Once prisoner sick call requests are triaged, they are
16 supposed to be referred to a doctor or nurse practitioner for
17 more serious concerns and seen within seven days. Again,
18 MDOC's own documents show this isn't happening.

19 In fact, the sick call process is so broken at EMCF
20 that despite the fact that there was a very brief improvement
21 in patients' abilities to see the doctor at EMCF, that
22 improvement had disappeared by the time of trial.

23 THE COURT: What are you recommending? I assume that
24 if somebody is attacked and beat up and is bleeding or has a
25 severe knife wound or something like that, that needs emergency

1 care. And I assume -- I would agree with you. It does and it
2 should be available on a reasonably prompt basis. I know that
3 for my family to get to see -- get an appointment with a doctor
4 that we can and do pay for, there's no problem with that at
5 all, and we think that they are the best we can find, it
6 sometimes takes days or weeks to get an appointment with
7 somebody. Hopefully we can get an appointment, but we can't
8 get an appointment usually with the doctor that we would like
9 on an emergency basis. We have to use the emergency room.

10 What should happen in the prison? What's wrong with
11 the doctor seeing the patient the next day on a non
12 life-threatening situation, even though he's uncomfortable or
13 has a headache or has even a wound that's not an emergency
14 situation? What's the correct quality of medical care in a
15 prison?

16 MS. MONJU: So, for example, Your Honor, when we talk
17 about episodic care, it actually includes life-threatening
18 situations as well. For example, prisoners who have had
19 serious chest pains and histories of heart disease have had to
20 submit sick call request forms, and that's the only way they
21 can get to the doctor.

22 But if a nurse doesn't look at those forms within 24
23 hours like they're required to do by MDOC policy, frankly, Your
24 Honor, there's a chance that patients could die. Even for less
25 serious concerns, patients -- still with quite serious concerns

1 for patients who have to see the doctor, they're not seeing the
2 doctor the next day. They're not seeing him the next week.

3 MDOC's chief medical officer, Dr. Perry, testified
4 there's still a backlog of sick call requests forms for
5 doctors. So this isn't a case where it's taking a few days to
6 see a doctor for a headache. This is a case where patients
7 with life-threaten conditions that aren't openly bleeding are
8 taking days, weeks, and sometimes years to see a doctor. And
9 so we would just --

10 THE COURT: And I heard numerous instances where
11 prisoners were taken to the closest emergency room available
12 for emergency care. And either -- and there was a lot of to-do
13 about whether they went in an ambulance or in a van, but they
14 got to an emergency -- their emergency needs seemed to be taken
15 care of. What are you -- I have seen you introduce reams of
16 medical records that have to be produced by somebody.
17 Somebody's taking time to see the people. What's the correct
18 balance here? What's constitutional or what's not
19 constitutional?

20 MS. MONJU: Absolutely, Your Honor. I would make two
21 points. The first is that I think as you've seen throughout
22 this trial, MDOC and EMCF write a lot down. They write down
23 CQI reports. They write down contract monitor reports. They
24 write down clinical visits and medical records. But what they
25 are not getting is results. They're not responding to any of

1 the problems that are appearing in these records, and that's
2 where plaintiffs' concern is.

3 So, for example, Your Honor said that people are
4 getting care, and we're not denying that they are. I mean, I
5 think if a prisoner is stabbed and they're openly bleeding,
6 sometimes they go to the emergency room. But it's simply not
7 constitutional for prisoners to be subject to a game of luck
8 about whether they're going get medical care.

9 THE COURT: You've introduced proof, I believe, of
10 only one death in four or five years worth of evidence
11 presented in this case.

12 MS. MONJU: Oh, no, your Honor. There was one
13 suicide, but there have been many, many deaths. I can talk
14 about one where prisoners weren't able to get guards'
15 attention. They were banging on their cells trying to get
16 guards' attention because a man was unconscious on the floor in
17 his own urine and feces, and guards ignored them for hours, and
18 he died later that day.

19 You heard testimony about guards walking past a
20 prisoner who was choking. He died. There have been five
21 deaths at EMCF in this year alone, and that's with the court
22 watching conditions at EMCF. There are many, many deaths, and
23 there are deaths in Dr. Stern's and -- Dr. Stern's report where
24 he says he can't definitively say that EMCF caused the
25 prisoners' death -- he wasn't there -- but he said that EMCF

1 deprived the prisoners of every chance they had at life.

2 And those are the problems plaintiffs complain of,
3 Your Honor. It's simply not fair. It's simply not
4 constitutional that prisoners are subject to a game of luck of
5 whether they will live or die at EMCF.

6 THE COURT: Has medical care improved with the setting
7 up of the infirmary or medical clinic or whatever we're calling
8 the new unit that has been organized within the last year?

9 MS. JOHNSON: Right, your Honor. So that's Housing
10 Units 7, and it's what defendants call their acute care unit.
11 So a couple of points to make about that. First, it has
12 nothing to do with medical care. There's no medical care
13 provided there. It's had no impact whatsoever on the quality
14 of medical care. It's a mental health unit. It was
15 established 19 days before trial, 19 days. It's barely even in
16 existence. It's only treated --

17 THE COURT: You'd rather have it than not have it.

18 MS. MONJU: Absolutely, Your Honor. Plaintiffs are
19 not denying that. But it's treated five patients out of a case
20 load of over 1,000 with serious --

21 THE COURT: Has medical care improvement? We had the
22 doctor testify. He didn't even have a doctor on site until he
23 came on. I've forgotten when -- what day.

24 MS. MONJU: August 2017, Your Honor.

25 THE COURT: You certainly would agree that that is an

1 improvement.

2 MS. MONJU: Your Honor, we would much prefer to have a
3 doctor on staff than to not have a doctor on staff. But as
4 Dr. Arnold himself testified, he does not oversee the vast
5 majority of care at EMCF. Plaintiffs' experts have identified
6 several deficiencies in care, including nursing -- nurses
7 practicing outside of the scope of their licensure, nurses
8 ignoring significant evidence that plaintiffs who had
9 life-threatening conditions in treating them inappropriately,
10 several problems with nurses that Dr. Arnold simply has nothing
11 to do with.

12 Just as an example, MDOC policy requires that a doctor
13 or nurse practitioner conduct rounds in the medical unit.
14 That's where the most ill patients are. The doctor said
15 himself he doesn't do it. He doesn't treat EMCF's most acutely
16 ill patients, and he leaves that to nurses who frankly,
17 Ms. LaMarre said, were extremely poor.

18 THE COURT: Medical care, at least in my family's
19 experience in the last few years, is that you rarely see an
20 M.D. before you see a nurse practitioner. And a lot of times
21 you never get to the doctor.

22 MS. MONJU: And I think that supports our point, Your
23 Honor.

24 THE COURT: Is that not the way this system is run?

25 MS. MONJU: That is the way the system is run, and

1 that's not plaintiffs' complaint. Not every prisoner needs to
2 see a doctor. The problem is the nurses they are seeing aren't
3 doing their jobs, and it's putting patients at risk.

4 And, Your Honor, a really simple way to improve a lot
5 of conditions at EMCF with respect to medical care would be to
6 first, as you and I have discussed, there aren't enough staff
7 there, and MDOC frankly has no idea how many staff they need at
8 EMCF. They've never done a staffing analysis.

9 Second, there are pretty good policies in place of
10 EMCF. Nurse LaMarre would charge a few of them, but they're
11 pretty good. And I think a huge issue is that the staff simply
12 aren't following those policies. Care would improve quite a
13 bit if staff at MDOC were adequately staffed and if they
14 followed those policies.

15 THE COURT: What is a judge in a case like this
16 supposed to do? Tell the state of Mississippi and the medical
17 contractor to put "X" number of doctors on staff?

18 MS. MONJU: So, Your Honor, we have actually proposed,
19 I think, numbers that would make a lot of sense because they
20 come directly from MDOC's health care vendor, Centurion. As
21 can you see on this chart, Centurion proposed a staffing plan
22 in 2015 that MDOC rejected. MDOC slashed the amount of
23 staffing in that plan. We think this would be a great place to
24 start.

25 But, frankly, Your Honor, what EMCF really needs is an

1 expert to assess the needs of the facility and to tell MDOC how
2 many staff they need there, and that is certainly something
3 that's within Your Honor's power to order.

4 THE COURT: All right. Thank you.

5 MS. MONJU: I'll just keep talking about a couple of
6 failings in access to care at EMCF. As an example, plaintiffs'
7 expert, Ms. LaMarre, found patients with chronic disease likes
8 diabetes, asthma, and heart disease that weren't getting
9 chronic care. They are also problems with patients not being
10 escorted to appointments because there are too few security
11 staff to bring them. And because of this security
12 understaffing, patients aren't getting the care they need.

13 I can also talk about the medication administration
14 problems you've heard of. It's called pill call. MDOC's chief
15 medical officer says pill call needs to happen within the same
16 hour and a half window every single day because prisoners are
17 getting medications that they have to receive at the same time.
18 But as Your Honor heard from prisoners and have seen in medical
19 records, because there's such short staffing at EMCF, nurses
20 can only get pill call done at 9 a.m., noon, 3 a.m., 2 a.m.
21 It's all over the map. And that's only when pill call occurs
22 at all.

23 You heard from Warden Shaw directly that sometime pill
24 call just doesn't happen. That means prisoners who are
25 vulnerable and mentally ill, the sickest prisoners in the state

1 of Mississippi, aren't getting their medications and Your Honor
2 can see the results of that. Prisoners are sick, they're
3 violent, they're not getting better, and it puts all prisoners
4 at risk.

5 You also received testimony about the fact that
6 medication administration is so broken at EMCF that there are
7 medications called stat and now medications. Dr. Stern
8 testified these are medications like nitroglycerine that need
9 to be administered within minutes or even seconds. But as Your
10 Honor can see on this chart, EMCF can't manage to get these
11 medications to prisoners within 24 hours. That's outrageous.

12 And, Your Honor, the problems with medication
13 administration at EMCF were evident on that witness stand.
14 Mr. Merlin Hill testified that EMCF was not giving him his
15 medications for his fatal seizure disorder and as a result he
16 was racked with tremors while he was testifying. Your Honor,
17 medication administration is so bad at EMCF that they couldn't
18 prevent Merlin Hill from trembling in front of Your Honor while
19 he was testifying.

20 Mr. Merlin Hill is not unique in a population nearly
21 all of whom are on medication. This is a massive problem at
22 EMCF, and MDOC has provided no rebuttal to it.

23 Those are some of the most glaring deficiencies in
24 medical care, Your Honor, but I will also briefly summarize
25 that you've heard the medical record system is poorly designed

1 and it's difficult to use and it results in inaccurate records
2 that endanger patient care.

3 You've also heard that EMCF lacks adequate clinic
4 space, equipment and supplies, and you've heard that EMCF's
5 dental care is deficient as are its transfer screening where
6 it's supposed to catch all of the diseases prisoners have when
7 they come in the door so they get adequate treatment, and MDOC
8 has provided no evidence to rebut those deficiencies.

9 Your Honor, as I've discussed, a common thread through
10 all of this is that there just isn't sufficient staffing at
11 EMCF to get the job done. It's why pill call doesn't happen.
12 It's why they're not seeing the doctor in time. It's why
13 they're not getting the care they need. And a result, all of
14 these deficiencies that I've just discussed are subjecting
15 prisoners to a substantial risk of serious harm. MDOC has been
16 aware of that risk for years, and it's done nothing.

17 If Your Honor doesn't have any more questions about
18 medical care, I can move on to mental health care.

19 THE COURT: Thank you.

20 MS. MONJU: Your Honor, with respect to plaintiffs'
21 mental health claim, plaintiffs bring that on behalf of the
22 mental health subclass. Those are all the prisoners at EMCF
23 who have or may have mental illnesses. As the Fifth Circuit
24 held in *Gates v. Cook*, mental health issues are just as serious
25 as physical ones. Therefore, prisons officials violate the

1 Eighth Amendment if they are deliberately indifferent to
2 prisoners' mental health needs.

3 As Your Honor learned during trial, MDOC has placed
4 over 1,000 prisoners with mental illnesses at EMCF. But
5 Dr. Bruce Gage, plaintiffs' expert, has testified that MDOC has
6 housed those prisoners at EMCF but it's failed to provide them
7 with even basic medical -- mental health care for their
8 illnesses.

9 Dr. Bruce Gage's testimony is supported by MDOC's own
10 CQI records, internal audits, and medical records, all
11 substantiating that patients at EMCF are not getting the mental
12 health care they need.

13 Again, as with medical, defendant has done so little
14 to rebut plaintiffs' overwhelming evidence that many of
15 plaintiffs' allegations remain entirely un rebutted. For
16 example, MDOC again designated no mental health expert to
17 discuss care at EMCF. MDOC couldn't even be bothered to call
18 it's own statewide mental health director to discuss mental
19 health care at EMCF. And as far as documents go, defendant
20 submitted a single page from a single medical record regarding
21 a single encounter with a psychiatrist who is no longer on
22 staff at EMCF.

23 I'll talk about several of the deficiencies in mental
24 health care at EMCF now. First, Your Honor, prisoners at EMCF
25 don't receive adequate treatment planing, if they receive

1 treatment planning at all. As Your Honor learned during trial,
2 mental health treatment plans are fundamental to patient care
3 because these are the road maps mental health care providers
4 use to provide care to patients. But MDOC's own documents show
5 that significant improvements are needed at EMCF with respect
6 to treatment plans.

7 For example, an internal audit in December 2017 of
8 mental health care at EMCF found that 40 percent of patients at
9 EMCF, based on sampled records, did not have treatment plans.
10 And of the treatment plans that existed, 50 percent didn't have
11 crucial information for patient care.

12 MDOC's entire response to this is to ask Nurse Dunn
13 if, in fact, patients do have treatment plans. Unsurprisingly,
14 Nurse Dunn said yes, but her response simply isn't credible,
15 when MDOC's own internal documents show that a vast number of
16 prisoners at EMCF do not have treatment plans.

17 EMCF staff also failed to provide timely, meaningful,
18 and confidential mental health therapy to prisoners. Mental
19 health therapy is woefully inadequate at EMCF. Dr. Gage
20 testified that he found no evidence of individual therapy at
21 EMCF and minimal evidence of group therapy, despite the fact
22 that MDOC policies and Centurion policies require individual
23 and group therapy.

24 THE COURT: I thought some of the nurse practitioners
25 in the mental health unit were providing at least some therapy

1 to the prisoners. Do you disagree with that?

2 MS. MONJU: So there is very minimal therapy offered
3 to some prisoners erratically. It's hard to say who gets it
4 when and why, but MDOC's own records cite significant
5 shortcomings in mental health care which go back to a lack of
6 staffing, inadequate staff training, and a lack of proper
7 policies requiring that care.

8 So, for example, I can talk about the residential
9 treatment unit at EMCF. This is housing Unit 3. And it's
10 where the most seriously ill mental health patients at EMCF are
11 supposed to be housed.

12 But as Your Honor can see from a December 2017 audit
13 of mental health care at EMCF, the residential treatment unit
14 is a residential treatment unit in name only. The audit I
15 discussed from 2017 shows that zero percent of the sampled
16 records in Housing Units 3 show that patients received
17 individual therapy every 30 days, and only 25 percent of the
18 sampled records show any evidence whatsoever of group therapy.
19 MDOC essentially decided to warehouse the largest concentration
20 of its most seriously ill mental health patients in a single
21 unit and then deny them care altogether. That is a critical
22 failing.

23 And if Your Honor -- I can refer you to *Brown v.*
24 *Plata*, Justice Kennedy's opinion affirming classwide relief in
25 a California case that said that such failure to provide care

1 is simply incompatible with the concept of human dignity and
2 has no place in a civilized society.

3 There are several other failings and care at EMCF,
4 Your Honor. You've heard that EMCF consistently fails to take
5 precautions to prevent suicides and self-harm at EMCF. For
6 example, EMCF -- you heard Dr. Perry admit that in 2016 EMCF
7 was told to provide safety mattresses to its prisoners. These
8 are the mattresses you heard about that are harder to tear
9 apart.

10 THE COURT: Ms. Monju, you and Ms. Johnson have been
11 arguing to me for well over an hour now about all of these
12 problems that I have heard five weeks about from the witness
13 stand, and you have not given me the first suggestion for a
14 remedy, even if I were to find for the plaintiffs on everything
15 that you have argued. Are you going to argue a remedy to me?

16 MS. MONJU: Absolutely, Your Honor. So Your Honor
17 asked for broad guidance.

18 THE COURT: You're running out of time.

19 MS. MONJU: Yes, Your Honor. So Your Honor asked for
20 broad guidance as to remedies, and there are several options we
21 believe would make a lot of sense in this case. And we've said
22 Your Honor could order a staffing analysis at EMCF with respect
23 to both security and health care staffing. It's something that
24 there is no evidence has ever happened at EMCF. MDOC has
25 literally no idea how many staff are needed at EMCF, and this

1 would give MDOC the bare minimum staffing numbers it needs to
2 make EMCF a safe and adequate facility.

3 Your Honor could also order that EMCF revise its
4 policies with respect to prisoners there. We've talked about
5 several policies like punishing prisoners who harm themselves
6 despite the fact that that's a product of their mental
7 illnesses that simply run afoul of the constitution. Your
8 Honor could order an expert, for example, to propose revisions
9 to those policies and then require staff at EMCF to actually
10 follow those policies. That would be a substantial improvement
11 in conditions at EMCF.

12 In addition, Your Honor, we've talked a lot about the
13 fact that the contract monitor identifies problem after problem
14 after problem in report after report. And they're never
15 systemically addressed. We've also talked about the fact that
16 medical records and CQI reports, same thing, identifying
17 problem after problem, never addressed.

18 Your Honor could order that an expert or MDOC devise
19 an oversight system that will not only identify problems at
20 EMCF but will actually ensure that they're solved at a systemic
21 level, and that's where the constitutional failing is. They
22 are not solved.

23 But, Your Honor, frankly you also needn't take that
24 granular action. As has been the case in dozens of courts
25 across the country and as have been the case in several courts

1 in this district, in just the last decade, Your Honor could
2 appoint a subject matter expert or monitor to devise remedies
3 that are mutually acceptable to the parties and that would fix
4 conditions at EMCF. That's frankly a very popular option, and
5 we think it is one that would be good here.

6 But we also would say, Your Honor, that the most
7 important thing you could do is to define the conditions at
8 EMCF that are unconstitutional and then either have the parties
9 come back to address remedies or, as I said, appoint that third
10 party to devise remedies that would fix the problems at EMCF.

11 Your Honor also raised a couple of questions about
12 what it should do with evidence of what defendants have
13 presented as so-called improvements at EMCF. I'd be happy to
14 address that in some more detail as well if that would be
15 helpful.

16 So we've heard MDOC say repeatedly that it's doing its
17 best and that EMCF is getting better and that it should
18 therefore escape liability. But, Your Honor, MDOC is sorely
19 mistaken. First, Your Honor heard testimony from 19 prisoners
20 that EMCF is as dangerous and unconstitutional as it ever was.
21 They are getting assaulted. They are not getting medical care.
22 They're not getting adequate nutrition. They're not getting
23 mental health care. Things haven't changed.

24 Next, the evidence that MDOC has presented of its
25 so-called improvements are essentially irrelevant to

1 plaintiffs' claims, and I can give a few examples. So, for
2 instance, Your Honor, they talk about netting and body scanners
3 to catch weapons coming into the facility. But plaintiffs'
4 allegations are that there are materials inside the prisons
5 that can be used to make weapons, and contraband rates are
6 soaring. The problem isn't netting or body scanners. It's
7 that guards aren't doing their job to keep materials that can
8 be used as weapons out of the hands of prisoners.

9 In addition, they claim to have hired more
10 correctional officers. But as you heard from Ms. Johnson,
11 that's entirely irrelevant if the number of officers on a pod
12 at any one time haven't changed. As Your Honor and I
13 discussed, hiring a new doctor doesn't fix medical care at EMCF
14 if he's not providing the vast majority of care. And as Your
15 Honor and I also discussed, opening an acute care unit on the
16 eve of trial that has served .4 percent of the mentally ill
17 population at EMCF isn't enough to address systemic
18 deficiencies where EMCF is failing to give all mentally ill
19 prisoners care.

20 And I think one thing you've also heard that hasn't
21 been addressed yet is that MDOC has changed contractors during
22 the course of this lawsuit and that that somehow has fixed the
23 problems at EMCF. But that has nothing to do with the core rot
24 at EMCF, which is that MDOC has decided to lock up its most
25 vulnerable prisoners there, has denied them basic necessities

1 and then has consistently slashed staffing for its contractors
2 at the facility without regard to the failure to address those
3 deficiencies. If MDOC isn't forced to change, regardless of
4 who was operating the prison, EMCF wouldn't change.

5 And on that point, Your Honor, Ms. Johnson spoke
6 briefly about the fact that even if EMCF has somewhat improved
7 over the course of this litigation, it is settled Supreme Court
8 and Fifth Circuit precedent that that is not enough to avoid
9 constitutional liability if defendants cannot meet -- and I
10 quote -- the heavy burden of proving that unconstitutional
11 conditions cannot recur.

12 And, Your Honor, I'm happy to provide several
13 citations for that, including *Friends of the Earth v. Laidlaw*,
14 which is a Supreme Court case in 2000, and *Gates v. Cook*, a
15 leading Fifth Circuit case on prison conditions, which say that
16 this is because defendants can't make what essentially are
17 changes -- window dressing changing to avoid liability and then
18 be permitted to go right back to what they were doing before.

19 Your Honor has asked for examples of how defendant
20 might have met this burden. They could have changed the
21 contracts. They could have included increased staffing. They
22 could have done several things to prove to Your Honor that
23 conditions at EMCF were permanently improved. But as you have
24 repeatedly heard on the witness stand, the cosmetic changes
25 that have been made at EMCF are not required in any contract,

1 and MDOC is not forcing its contractor to make any of these
2 changes, and they can all be undone tomorrow. And, therefore,
3 we would say that regardless of the so-called improvements MDOC
4 has made, which do not address the vast majority of plaintiffs'
5 claims, MDOC cannot escape liability.

6 So, finally, Your Honor, regardless of your approach
7 to this case, we would say that it is clear that the more than
8 1200 men at the East Mississippi Correctional Facility are
9 entitled to relief. MDOC chose to house its most vulnerable
10 mentally ill prisoners there. They contracted the daily care
11 of those prisoners to for-profit vendors, and then it abandoned
12 its responsibility to provide basic necessities under the
13 constitution to those prisoners.

14 MDOC has been aware of the terrible conditions at EMCF
15 for years. It received report after report about those
16 conditions, but it has failed to do anything. That is the
17 definition of deliberate indifference, and these are precisely
18 the conditions under which the constitution requires the courts
19 intervene. And, therefore, in light of the weight of
20 plaintiffs' evidence substantiating both the substantial risk
21 of harm to prisoners and MDOC's deliberate indifference to that
22 risk, we would ask the court to grant relief on all of
23 plaintiffs seven claims and provide the men at EMCF the relief
24 they desperately need. Thank you, Your Honor.

25 THE COURT: Thank you. All right. Mr. Siler, before

1 we begin your argument, we're going to take about a 15-minute
2 break. We'll come back at 20 minutes after 11.

3 (Recess)

4 THE COURT: Mr. Siler, you may proceed.

5 CLOSING ARGUMENT FOR THE DEFENDANTS

6 MR. SILER: I am going to dispense with what I had
7 originally intended to start with about going through some of
8 the legal issues because, frankly, plaintiffs don't -- and
9 defendants don't disagree all that terribly about what the
10 legal standards are. Our point of departure is is whether the
11 facts -- what the facts mean and how you interpret the facts in
12 light of those standards.

13 So I want to skip there. You had you asked us that --
14 last week you had asked us to categorize all these shotgun
15 claims the plaintiffs have brought into claims that they had
16 clearly not met their burden of proof on and maybe claims that
17 they had done a little bit more on. It probably goes without
18 saying that defendants believe plaintiffs have not met their
19 burden of proof on any of their claims, but certainly some of
20 them seem to be a little bit easier to dispose of than others.
21 And I'll start there. And, obviously, if the court wants to
22 direct me to things of interest to you, I can move around very
23 easily.

24 The first claim I'm going to address is their
25 nutrition claim. They had seven claims. Basically nutrition,

1 there were two different environmental conditions claims, an
2 excessive use of force claim, and what I call innate-on-inmate
3 assaults claim, but I think they call it protection from harm.
4 Then they had two claims on the medical side. And, of course,
5 I'm not addressing the medical side. Mr. Bentley will be doing
6 that.

7 But seems to me like the first claim that's easy to
8 dispose of from the court's point of view to me is this
9 nutrition claim. I feel like we spent the last five weeks
10 picking nits over a variety of things that don't have any
11 significance in anybody's mind other than plaintiffs, and I'll
12 come back to that in just a minute.

13 But we've spent a lot of time talking about caloric
14 intake and nutritious calories and failure to adhere to posted
15 diets when this expert was criticizing us for using bread
16 instead of hamburger buns on certain types of sandwiches and
17 weight loss and an unsanitary kitchen, distribution of food in
18 a mechanism that they did not find -- or she did not find
19 acceptable and criticized us over.

20 Just from a very common sense standpoint, there was
21 one inmate that I recall testifying that seemed he was on the
22 thin side of things. Every other inmate that we talked to or
23 we saw on that witness stand, Your Honor, as I know recalls,
24 were people that were having no issues missing food, missing
25 calories, having any problems.

1 There was at least one inmate that weighed over
2 300 pounds. There were several that were over 200 pounds. We
3 asked the height and weight of virtually every one of them to
4 make certain the record was clear. These people had no issues
5 with respect to nutrition, and I think that's a very easy spot
6 for the court to say they didn't meet a constitutional burden
7 that their Eighth Amendment rights to cruel and unusual
8 punishment have been violated in any way.

9 They had an expert come in and talk about an
10 unsanitary kitchen. This court has been through that kitchen.
11 Again, you don't need a monitor with white gloves or whatever
12 she was doing to look at that kitchen to see that that kitchen
13 looked good, it looked clean, things were well maintained, and
14 they passed all of their health inspections by the Mississippi
15 Department of Health.

16 There's just nothing to suggest that there's anything
17 approaching unsanitary about this kitchen. Nobody had been
18 hurt, gotten ill, been sick, had any problems with anything
19 regarding that kitchen. And to say that there was cruel and
20 unusual punishment going on as a result of the condition of
21 that kitchen to me is just the height of ridiculousness and
22 makes me wonder why we've been here for five weeks.

23 They talked about the distribution of food and the
24 fact that inmates were distributing food trays within the pods.
25 And every expert that came across this stand said that was

1 fine, there was no issue with inmates distributing food trays
2 within pods as long as they were being supervised by
3 correctional officers. They all were. Nobody said they saw
4 anything different. It's just -- again, there's just no basis
5 to any of these claims regarding nutrition.

6 Second, two issues that I'll talk about a little bit
7 involved the combined claims regarding environmental
8 conditions. Once again, to say that there's any substantive
9 issue to any of these things is just beyond ridiculous, in my
10 view.

11 Let's don't forget as I start this. The court's been
12 to that facility and despite what you read in the press and the
13 horror stories and the dungeon and the supremely harsh and
14 terrible conditions of that prison, this court knows what the
15 prison looks like. It is a 20 year old -- not quite 20 year
16 old building. My house is older than 20 years old. It's
17 painted, it's polished, it looks nice. They keep up with it.

18 We showed the court videos that the plaintiffs put
19 into evidence that indicate this wasn't done in the last two
20 weeks. We do this regularly. We paint there every day. The
21 place looks good. It's an incredibly clean and well-run
22 physical plant. It's climate controlled. They have air
23 conditioning and heating.

24 THE COURT: Mr. Siler, it did not look good in the
25 video clips that the plaintiffs introduced into evidence that

1 were probably the 2016 time. It had been cleaned up
2 substantially from what -- where it started.

3 MR. SILER: Well, I would disagree with you, but
4 that's -- I understand that's what the court feels. I get
5 that. But I'd urge the court to go back and look at them
6 because I don't think they look any different at all.

7 They have big screen TV sets. They have headphones.
8 They have programs, educational, religious, substance abuse,
9 life skills. They have -- even though they criticize health
10 care, Your Honor knows just like I do, 99 percent of the
11 inmates in that prison wouldn't have anywhere close to the
12 quality of health care if they were not in prison that they
13 have where they are. Most of these men would not be on any
14 kind of health insurance.

15 It's just the fact of life in the area in which we
16 live. Every one of them is on medications that the list of
17 which is as long as your arm. I don't know that anybody that
18 came across the stand didn't say they were a diabetic or had
19 various other kinds of illnesses, and I doubt seriously whether
20 any of them would have been on those medications in the free
21 world.

22 And as you pointed out earlier in your questioning,
23 none of us are going to get in to see a doctor this afternoon
24 if we've got a problem unless it's an emergency and we go to an
25 emergency room. But these gentlemen all have access to medical

1 care right there where they live. They get three square meals
2 a day. They have indoor/outdoor gymnasiums.

3 You know, we're talking about -- and all of us know
4 about prisoners living in tents in Arizona, things like that.
5 To think about the conditions in which these individuals live
6 is just -- it's -- I don't get it. I don't understand where
7 cruel and unusual punishment comes in.

8 To get back to the particular specifics that they
9 raise, they talk about fires. Of course, fires weren't set by
10 the prison. They weren't set by the correctional officers.
11 They are set by the inmates. They've -- as the warden said,
12 they've gotten control of that situation by shutting the food
13 slot because people aren't going to set fires in their cells.
14 That situation has improved. It essentially taken care of.
15 It's not an issue anymore.

16 Does the prison have plumbing problems from time to
17 time? Yes. But virtually all the testimony was that the
18 plumbing problems were caused by inmates flushing things down
19 the toilets to keep them from being found or otherwise sabotage
20 things, not by anything the prison was doing. We don't have
21 enough maintenance people to get in there and fix everything on
22 a moment's notice, but everything in that prison are well
23 managed and well maintained.

24 They talked about filthy living conditions. They talk
25 about pests. Again, I've been in that facility several teams.

1 I don't see any of that.

2 Their expert witness on sanitary conditions said that
3 a twice-a-month visit by the pest control should -- was a
4 reasonable response dealing with pests and that was a
5 reasonable way to do it. Proof is that that's what we do. We
6 have somebody come in twice a month.

7 They've talked about inadequate lighting. Most --
8 you've been in that facility, Your Honor. You've seen the
9 lighting. Unless the inmates tear it up, there's nothing wrong
10 with that lighting, just from a pure common sense standpoint.

11 They talked about exposure to bodily fluids and
12 chemicals, and the -- Warden Shaw mentioned that every employee
13 who was -- rather every inmate who is employed there that does
14 cleaning and things of that nature is given training before
15 they begin those jobs to -- about how to avoid exposure to
16 bodily fluids and other chemicals, and they are given personal
17 protective equipment. Now, whether they wear it or not,
18 whether they show up in tennis shoes rather than rubber boots
19 is up to those inmates. But they are given all the equipment,
20 and that's done before they ever start the jobs.

21 They talk about lack of physical exercise, but they've
22 got all the facilities in the world, and there's no reason, no
23 excuse for them having -- not having enough physical exercise.

24 They also include under environmental conditions
25 information about inadequate mental health, and I presume that

1 what they are addressing there is the -- what they call the
2 extreme social isolation and sensory deprivation involved with
3 isolated confinement, solitary confinement. We've found no
4 case -- and we'll cite to the court the cases in our posttrial
5 briefs rather than me spend time dwelling on them here. But
6 we've found no case that's ever held that isolated confinement
7 is a per se violation of the Eighth Amendment.

8 And just to briefly touch on that a little bit more,
9 the evidence and the proof in the record is that everyone in
10 isolated confinement in Housing Unit 5 is reviewed as a part of
11 a review process once a month. One of the expert witnesses,
12 Mr. McGinnis, sat in on one of the review meetings. Warden
13 Shaw sits in on all of those meetings. And every 30 days,
14 every single resident of Housing Unit 5 is reviewed and the
15 staff discusses along with the input of MDOC whether people
16 need to be put in for those -- or needs to be -- needs to
17 remain in isolated confinement.

18 Just another common sense aspect of all that is that,
19 you know, prison is a lot like a community, and we have to take
20 dangerous people out of a community and put them in prison, and
21 in the community of prison we have people that are dangerous to
22 correctional officers and dangerous to other inmates. We've
23 got to take them out.

24 Is that going to have some impact on their mental
25 health and degradation of their mental health? Yes. I suspect

1 being put in prison to begin with is going to have some impact
2 on their mental health, but it has to be done. Everybody that
3 came across this witness stand said you've got -- that's a
4 crucial management tool within a prison. You have to have it
5 available, both as a measure of punishment, as a measure of
6 protection for everyone else, and as a measure of some
7 motivation not to break rules and violate problems within that
8 prison. If you don't have it, you know, coloring books and
9 timeouts are not going to work for hard criminals.

10 So to me the environmental conditions and the
11 nutrition are --

12 THE COURT: Are you arguing that isolation might be
13 unconstitutional for one prison but not another?

14 MR. SILER: No, I'm arguing -- there's no case out
15 there, to my knowledge, that says isolated confinement violates
16 the Eighth Amendment. I'm sure you can find a case or two here
17 or there that -- an individual case. There may be some facts
18 that would give rise to it. But just as a general principle,
19 I've not seen a case anywhere saying isolated confinement is
20 violation -- per se a violation of Eighth Amendment.

21 THE COURT: All right.

22 MR. SILER: All right. So those are my initial
23 thoughts on nutrition and environmental conditions.

24 The third grouping of claims that I'd like to address
25 to me fall right under those two in terms of the plaintiffs'

1 failure to prove their cause of action has to do with excessive
2 use of force.

3 First of all, no witness got on the stand that I
4 recall and criticized or complained in any way about any of the
5 policies that MDOC or MTC follow or utilize with respect to --
6 frankly I can't remember -- I can't remember much criticism of
7 policies in any respect, certainly not with respect to
8 excessive use of force.

9 They talk about -- they complained about the fact that
10 we have some spontaneous use of force incidents that should
11 have been planned use of force incidents. And I'm sure we can
12 all sit around and argue about that and there probably are
13 occasions where correctional officers use spontaneous uses of
14 force as opposed to backing it up doing it in a planned and
15 more determined fashion. And I'm certain anecdotally you can
16 come up with isolated incidents in which that happens.

17 But, as a matter of systemic issues or systemic
18 problems within the prison, there's no proof at all with that.
19 I think we saw a couple of videos in which handheld cameras
20 were used to deal with planned use of force incidents or to
21 depict planned use of force incidents. And, you know, again,
22 I'm not very smart and maybe I don't understand all this. But
23 they looked very professional to me, and the correctional
24 officers handled themselves appropriately, they handled
25 themselves well. They weren't beating, kicking, snatching

1 inmates around. I recall one where they were in the hallway
2 where they stopped to loosen up an inmate's handcuffs or leg
3 irons because the inmate was claiming that they were too tight.
4 And doing that kind of thing just indicates the height of
5 professionalism to me, not them treating inmates badly.

6 Plaintiffs complain that we don't use deescalation
7 enough. I'm sure they can come up and complain about virtually
8 anything on any particular basis, but I'm not aware of any case
9 in which any court has held that it's a violation of the Eighth
10 Amendment -- anyone's Eighth Amendment rights that they weren't
11 put through some deescalation process before they were -- use
12 of force was utilized on them.

13 I think I mentioned in opening, and it bears repeating
14 here, that a lot of what this plaintiffs are asking this court
15 to do is not something that's required by the constitution.
16 It's not a constitutional minimum. It's what they think is the
17 thing that should be done. It's a best practices case. It's
18 a, "We think you should do it this way instead of the way
19 you're doing it," not because the constitution requires it, but
20 because they feel like it's a better way to handle things, and
21 this is one of those instances.

22 Mental health inmates they claim are being sprayed
23 with OC spray, even if the reason they are being sprayed is
24 because their mental health condition prohibits them from
25 complying with orders or rules of the prison. You know, that's

1 interesting to say on one point. But on the other side of
2 things, even mental health patients, they can kill you just as
3 dead as somebody who's completely sane. They can hurt you just
4 as bad.

5 And to say that just because somebody has a mental
6 health issue that a correctional officer doesn't have the right
7 to protect himself, to make sure things get done in a correct
8 way, again just to me that just seems ridiculous. And there no
9 cases of which I'm aware -- and we'll cite in our briefs to the
10 court to a lot of cases that deal with chemical -- use of
11 chemical agents, and I'm not aware of a single case anywhere
12 that says that the use of chemical agents is a per se violation
13 of the Eighth Amendment.

14 And I might add that it's -- you know, from a
15 standpoint of reasonableness, again using chemical spray that
16 causes momentary irritation is a heck of a lot better than a
17 flashlight or night stick or three or four correctional
18 officers having to jump on somebody in a cell, much less
19 intrusive means of dealing with those individuals.

20 They complain about the fact that we don't have
21 sufficient supervisory review of use of force incidents, but
22 all those use of force incidents they put in the record -- and
23 there's dozens and dozens of them -- every one of them was
24 reviewed by a supervisor. Every one of them talks about what
25 could we do better. Every one of them was reviewed by someone

1 other than the officers involved.

2 They talked about the fact or claim that we have
3 deficiencies in staff discipline with respect to correctional
4 officers who were involved in excessive use of force. I'd like
5 the court look at Joint Exhibit 59. It's the 116 pages of an
6 exhibit that deals with staff discipline. And it shows -- I
7 believe it demonstrates very well how much discipline goes on
8 with staff and how we try to train use incidents to better
9 people so that they'll handle things in a better way in the
10 future.

11 In my view, there's just no credible proof in this
12 record that the Eighth Amendment rights to the cruel and
13 unusual punishment have been violated with respect to the
14 excessive as you of force. It's just -- it's just not there.

15 Well, what does that leave? That leaves their
16 protection from harm or inmate-on-inmate assaults claim. They
17 went to a great deal of effort to fly Mr. Vail in here to talk
18 about how we were such an extremely dangerous facility. They
19 put on the information about assaults, and I think if you'll
20 look at what I believe is Plaintiffs' Exhibit 2849 where they
21 put in the statistical reports about assault, you'll see that
22 just simple math will tell you less than 15 percent of the
23 inmates in any given year have any issue with an assault.
24 It's -- when you look at it that way, it's a very rare thing.

25 As Mr. McGinnis continued to say over and over, the

1 sample sizes, when you looking at statistics, are so small that
2 even something that may look like a difference, if you start
3 looking at it over the course of the year and locations in
4 which those assaults allegedly take place, you're just looking
5 at such small numbers it's hard to really make anything out of
6 it.

7 And let me -- the court asked some I though insightful
8 questions a few minutes ago about how you compared, how do you
9 know. Let's say we had 100 assaults in the facility in 2016 or
10 2017. How does the court know through any objective evidence
11 that that's a big number, a small number, or about right number
12 given the circumstances? And that's why I spent a little time
13 talking about the deficiencies or actually the problems with
14 definitions and defining what assaults are.

15 As Mr. McGinnis was testifying, there's just no -- and
16 actually Mr. Vail too. You can't really compare assaults from
17 one prison to another, one state to another, because everybody
18 defines them differently. And even if you look at a document
19 in which a particular event was described, just like we did
20 with Mr. McGinnis the other day, reasonable people could sit
21 there and use the same definition and say, "This is not an
22 assault. This is an assault."

23 And when you look at things further from that -- so
24 somebody pushes somebody and it's an assault, is that that big
25 of a deal? If somebody stabs someone and they have to go to

1 the hospital, that is a big deal. Where do you draw the line
2 on that? To make an objective analysis on assaults is a very,
3 very difficult thing, and it's really hard to do much, although
4 we tried to be as objective as we could in taking a look at it.
5 It's just a hard thing to try to pin down when you get right to
6 it.

7 So where does that leave you? It leaves you with
8 trying -- looking at just from a common sense standpoint. I
9 asked a question earlier in the trial and I was serious about
10 it. I grew up in a family of four boys. We had more than 13
11 assaults a month amongst my brothers. It's amazing we lived
12 through high school.

13 But 1200 men who are hardened criminals who are
14 murderers, rapists, and all that living next to each other
15 24/7, 365 days a year in close proximity, they are going to
16 have fights. And 13.33 assaults per month, which is what the
17 plaintiffs claim happened in 2016, just doesn't seem to me to
18 be that big a number that excessive.

19 And Mr. McGinnis and Mr. Roth both who had 30 and 40
20 years plus in the Illinois and Michigan corrections system and
21 much experience throughout corrections -- throughout the
22 country, both testified that these numbers were not significant
23 and not out of line with any other facilities. And I don't
24 believe they are either.

25 Now, they complained about locks. Locks have been a

1 confounding subject for the prison management to deal with. As
2 Mr. Stonehouse said, these were appropriate locks for this
3 level of security. They were installed correctly. They are
4 maintained correctly. They operate and function correctly.

5 That doesn't mean they can't be defeated. He
6 testified that they have been defeated and every prison
7 struggles with these same issues. One of the lawyers somewhat
8 made light of the fact, well, how come we don't see prisoners
9 running around all over these jails if they can get out of the
10 cell doors? The fact is, you don't see them running round East
11 Mississippi either. There are occasions on which they were
12 able to defeat the locks, and we're not even sure if some of
13 those were inmates defeating them or whether it was
14 correctional officers defeating them. That's one of the issues
15 of things that the prison management has to deal with. They
16 get correctional officers that aren't good people either.
17 You've got to weed them out and deal with it and they create
18 problems.

19 But one of the inmates -- and I don't recall which
20 one, sat on the stand and said that the guards had about gotten
21 the lock situation figured out and that they didn't have as
22 many people getting out of these doors as they were. The way
23 they defeat them, as Mr. Stonehouse testified and I think some
24 of the inmate did too, it's very easy to put something, glue
25 something in there on a track or in a door jam to keep the door

1 from closing altogether. And it's just a matter, from the
2 correctional officer's standpoint, of going up and making sure
3 that those doors are closed every night.

4 They've gotten better at it. They took a reasonable
5 step to try to cure that issue, and I'm not sure that we've
6 seen any proof, significant proof, of any issue with those
7 locks in the last year.

8 They complained about contraband and as the court
9 noted earlier, every prison everywhere has contraband. I asked
10 Mr. McGinnis the other day, "Is there anything that they are
11 not doing at East Mississippi that they should be doing to keep
12 contraband out?" And he said, "No, they just have to stay with
13 it, be deliberate and continue to do things they need to do."

14 Are there -- is there contraband that's inside the
15 facility that the inmates are making use of? Yes. And what
16 Mr. Shaw told us was that they are taking some of that out,
17 those light fixtures from which they were making contraband
18 weapons, taking those light fixtures out. They have taken all
19 of those out or most of them out.

20 They are in the process of experimenting with a new
21 light fixture. They have purchased, I can't remember how many,
22 but it was a number of light fixtures and they were just a
23 matter of now getting them installed that they thought would
24 even be better.

25 So they're taking steps. They are not deliberately

1 ignoring anything, and they've got to do things in a deliberate
2 way. They have to keep budgets and all of those kind of
3 considerations in mind, but they are not ignoring anything.

4 Can people get contraband in through magnetic
5 resonance machines? Yes, they can. And do they have some
6 motivation to do it? Yeah. You buy a telephone at Walmart for
7 \$25 and sell it in the facility for \$600, which I think was one
8 of the things that one of the inmates said that phones were
9 going for within the facility. People are going to be
10 motivated to try to bring things in. You do your best. They
11 are working on it, but I can tell you they will never keep all
12 of it out nor can any other prison. But there's nothing
13 constitutional here about any of that.

14 They complained about counts and whether you believe
15 what people are saying about how the counts are being done or
16 believe how prison management contend the counts were being
17 done. One question I have when I looked at that is: Who's
18 being hurt? Where's there been any injury from a count?

19 We can talk about it all day long. You're supposed to
20 do face to photo. You're supposed to have two people or one
21 people (sic), however you're supposed to do it. But there's
22 never been an escape from that facility since 2012 when
23 Mr. Shaw first came into it.

24 No one testified that -- anything about a count
25 causing any harm to anyone, which isn't to say we're not going

1 to continue to be diligent about counts and change up the
2 attitude of the correctional officers and make sure things
3 happen the way they are supposed to. But there's simply
4 nothing that rises to the level of an Eighth Amendment cruel
5 and unusual treatment about a count. That doesn't subject
6 anyone to cruel and unusual treatment.

7 There's a lot of issues about gangs -- issues.
8 There's been a lot of discussion about gangs, more by the
9 lawyers than any of the witnesses. Ms. Thomas, who testified,
10 talked about the fact that she thought during her time there
11 earlier on that gangs are been an issue. Keep in mind
12 Ms. Thomas was not in that facility through most of 2016. She
13 was on sick leave.

14 THE COURT: You have about five minutes?

15 MR. SILER: Thank you. She wasn't there most of the
16 time.

17 Let me skip quickly to staffing which is the last
18 substantive thing I wanted to mention. They showed you a few
19 minutes ago P-2431. Look -- that's the roster. Look on the
20 back of that roster, Your Honor. They never show you the back
21 of it. There's another 26, 28 people that are included on that
22 roster on the back of that, all of which are available to staff
23 all of those positions. And it's just -- they know how to
24 manage their roster. They don't have an issue on the roster.

25 Frank Shaw said 100 -- he now has 177 correctional

1 officers employed there. He said that that's more than enough.
2 He can run his prison, run it safely and run it well with 177
3 officers. He could run it well before that, but this has given
4 him a real cushion. Both of our experts, Mr. Roth and
5 Mr. McGinnis, said that we could run that facility safely on
6 177 officers.

7 Plaintiffs -- let me finish with the roster thing real
8 quick. If you'll go look, you asked the question about how
9 many people need to be in Housing Unit 5. If you'll count
10 those spaces on that roster, they have 12 people assigned to
11 Housing Unit 5 as correctional officers, including a sergeant
12 and a lieutenant. So they have 14 people assigned to Housing
13 Unit 5 already. They don't need more.

14 They are like any other employer on any given day,
15 somebody may not show up for work. They may not -- they may be
16 on vacation. They may be training. They may be off on
17 discipline. They are having to move around and take care of
18 things, but they know how to staff this facility.

19 Their big problem with staffing is they say Mr. Vail
20 thinks there should be an officer on every pod. Well, that is
21 Mr. Vail just saying, "I think this will help." There is no
22 requirement by the Eighth Amendment that they have officers in
23 those pods. They are staffed -- all that is is he thinks it's
24 best practice or better way to do it, and it's -- that's not an
25 Eighth Amendment violation.

1 Two things quickly, and I'll get out of the way. This
2 court will have to deal with Prison Litigation Reform Act,
3 18 USC Section 3626, if it decides to remedy anything. As I
4 told the court at the opening, the purpose of that statute when
5 it was passed back in 1990s was to prevent or deter federal
6 courts from micromanaging the prison system. We'll deal with
7 more of that at break -- within the brief rather, but that
8 particular statutory provision places severe limitations and
9 restrictions on what exactly the court can order as a remedy.

10 What the plaintiffs want, Your Honor -- there's an
11 agenda here. They do not want private companies managing
12 prisons. They want them out. They couldn't get them out
13 through legislation so now they are trying to litigate them out
14 of business. That's what's going on.

15 They want to run the ACLU, the SPLC, the National
16 Prison Project, whatever groups that they can pull under their
17 umbrella, they want to run this facility. And they want you as
18 an accomplice to do that.

19 And when they talk about, as Ms. Monju did a few
20 minutes ago that they want a staffing analysis, they want a
21 revised policy, they want an oversight system, they want to
22 appoint monitors, what they are wanting is to let them run this
23 prison. They don't know how to run this prison. I don't know
24 how to run this prison. And with all due respect, neither does
25 this court.

1 That gentleman right there who's been doing this for
2 30 years or more knows how to run this prison. He's been
3 working on it since he came back at the end of 2015, beginning
4 of 2016. He is the kind of person we need sitting there
5 working on this prison. He and his team need to be the ones
6 doing this. They've come a long way in their journey. As the
7 poet says, they've got miles to go before they sleep. But we
8 need to get out of their way and let them run this prison and
9 not the ACLU and not the SPLC, because that's what they want to
10 do.

11 Thank you, Your Honor.

12 THE COURT: Let me ask a question. There was lots of
13 evidence during the plaintiffs' case about fires and torn up
14 lighting fixtures and filth and things of that nature. My
15 observations from the -- from the tour of the prison was that
16 it was pretty well spit shined. All of the Unit 5, the doors
17 had been repainted. The floors, I think, had been repainted.
18 It was -- in there even, it was very clean. It was clean as it
19 could be up and down the halls. The kitchen was clean. There
20 was substantial changes that had been made.

21 Should I take that as -- with a grain of salt and with
22 the plaintiffs' suggestion that the prison accreditation agency
23 was -- came in there three days before the court did and that I
24 can come in the day after they did and that the prison had been
25 cleaned up for those occasions? How should I take that?

1 MR. SILER: Your Honor, I've been in that prison a
2 lot, and I've never seen that prison look any different than it
3 did when you and I went in there. Now, yeah, if you go in
4 there the day after somebody has started a fire and smoke has
5 smoked up a white wall or charred up a door, yes, it's going to
6 look a little different that day.

7 But as Mr. Shaw said and those videos pointed out,
8 that people are in there painting five days a week every week.
9 Once they get back through there, they get things painted. I
10 don't recall looking in the video -- and Your Honor's memory
11 may be better than mine -- that the facility looked any
12 different in any of those videos than it did when you and I
13 went in there that day.

14 Now, I remember one day in Unit 5 -- one video in
15 Unit 5 we looked at that had the white styrofoam lunch trays on
16 the floor, and Warden Shaw testified that's how they deal with
17 things. At the end of breakfast, it was an 8:30 video is my
18 recollection it was, and they had opened the food slots and
19 thrown the styrofoam trays on the floor, which the porters then
20 come around later at some point and pick them up. But I don't
21 recall ever seeing -- that's why we showed some of those over
22 because I don't ever recall ever seeing a hallway that had
23 anything in it or any other photo. I don't recall seeing a
24 cell door charred in Housing Unit 5 in those videos.

25 Now, I do remember we saw one fire, which was a pretty

1 good demonstration of how they do it. They open those food
2 trays and set fire on something on that tray right outside the
3 door and once it gets to burning they push it out. But I don't
4 recall -- I just -- your memory is probably better than mine.
5 I just don't recall that facility looking much different than
6 it does.

7 I'll say this. Frank Shaw understands that the
8 physical plant needs to look good. People need to have pride
9 in it, both your employees as well as these inmates. I think
10 he and his staff do a wonderful job trying to keep that
11 facility up, given what they're fighting against with these
12 guys 24/7 with nothing to do except to create problems. So
13 that's my thoughts on it, Your Honor.

14 THE COURT: I frankly am surprised. I'm certainly
15 aware of the recent history in the Mississippi prison system,
16 including this one, and the head of the prior health care
17 contractor I think got in some trouble with the commissioner,
18 and I'm surprised that you haven't been arguing that changes
19 were made after that and that Mr. Shaw was at the lead of those
20 changes, but you haven't made that argument. Apparently you
21 don't think that there's been anything bad over there since we
22 started.

23 MR. SILER: No, I wouldn't say that. Mr. Shaw said
24 when he came in --

25 THE COURT: Like plaintiffs' expert. You don't think

1 there's anything bad, and he doesn't think there was anything
2 good.

3 MR. SILER: I wouldn't go that far, Your Honor. He
4 testified, Mr. Shaw did, when he first came to that facility in
5 2012 he almost got back on his plane and left. It was in
6 terrible shape. It was in lockdown mood. They ran it with
7 tactical teams. There was no programs. It was bleak place in
8 2012. At that point, that facility was run by another
9 contractor.

10 He came in, was there for a year for 2012 to 2013,
11 made a lot of changes, went out then for next two years, came
12 back in at the end of 2015 and started back dealing with that
13 facility again. And if they'd be honest with you, they'll tell
14 you that that facility has changed dramatically since he came
15 back in late 2015 because that's -- he is -- that's -- because
16 of him. And he didn't do it to try to help out a situation
17 that was going on or PR problem or whatever. Frank Shaw did
18 that because that's the way he runs prisons, and we need to get
19 out of his way.

20 THE COURT: Suppose I agree with Mr. Shaw that he has
21 made some substantial changes but that I agree with the
22 plaintiffs that there are certain things that they have
23 complained about that meet the test of being unconstitutional
24 and that need to be corrected? I understand that I have the
25 option and the power to issue an injunction that says what

1 specifically needs to be done and on what basis or timetable or
2 tend to in some way require changes and have to monitor it in
3 some way. Is that -- your position is it was -- nothing
4 unconstitutional is going on over there or has been, as I
5 understand your argument.

6 MR. SILER: Yes, I would agree with that. The
7 constitutional Eighth Amendment prohibition has not been
8 violated. Now, somebody may find a better way to do it, think
9 they know a better way to do it. But they don't know what
10 they're dealing with, Your Honor.

11 He's with those guys every day. He knows the people
12 he's dealing with, the inmates he's dealing with, the issues
13 that they're dealing with. It's a lot more complex and
14 complicated than you know, the ACLU knows, I know. And, yeah,
15 could somebody armchair quarterback and say, yeah, you should
16 have three more people on this shift, should you put people in
17 a pod. You can do that. But all that is is using
18 constitutionalizing requirements that you don't even give. The
19 constitution doesn't require that.

20 THE COURT: I can't get the plaintiffs to say anything
21 good about that prison, and I can't get the defendants to say
22 anything wrong. So thank you.

23 MR. SILER: Thank you.

24 THE COURT: All right. Mr. Morisani.

25 THE CLERK: Mr. Bentley.

1 THE COURT: Did I get the wrong person?

2 MR. BENTLEY: That's okay, Your Honor. I take it as a
3 compliment.

4 THE COURT: Mr. Bentley, I do apologize.

5 MR. BENTLEY: No apology necessary, Your Honor.

6 THE COURT: I've been sitting here looking at you for
7 six weeks. All right, sir.

8 CONTINUED CLOSING ARGUMENT FOR THE DEFENDANTS

9 MR. BENTLEY: I think it's time for me to say good
10 afternoon, Your Honor, and may it please the court. Your
11 Honor, from your -- I want to start where you left off with Mr.
12 Siler because you do have our theory of the case.

13 This case is about current conditions. It's not about
14 East as it existed in 2014, 2015 or 2016. And the evidence
15 that you have received shows a steady course of improvement at
16 East led by the commissioner who is the courtroom today,
17 Commission Pelicia Hall, led by Warden Shaw, led by the medical
18 staff at East Mississippi Correctional Facility.

19 So this case is about current conditions. But you're
20 right. What does the court do? This is a question you've been
21 asking. What does the court do when it is confronted with the
22 inevitable situation that changes are made and conditions are
23 improved at a facility over the course of litigation that is
24 carried on for this long?

25 What you do and where would I direct you first to look

1 is a decision by the Middle District of Florida, *Hughes v.*
2 *Judd*, 108 F.Supp. 3d 1167. This was a case brought by the
3 Southern Poverty Law Center against a facility in Florida. And
4 the judge in that case noted that the sheriff -- this was a
5 sheriff's department -- had engaged in a steady course of
6 improvement throughout the life of the litigation. The
7 district judge said, "What I have to do" -- and this is at page
8 1175 of that opinion -- "is look at the evidence." And this
9 judge looked at the evidence and said, "Nothing in the credible
10 evidence supports the notion that any improvement that has
11 occurred was motivated by an attempt to evade liability in the
12 litigation or that any improvement will disappear when the
13 litigation terminates."

14 I'm going to talk to you about the proof in this case,
15 Your Honor, and I think that is what our evidence shows just as
16 the district court in that case found that that was what the
17 evidence showed in Florida.

18 What Your Honor asked to us do on Thursday is take --
19 try to distill the plaintiffs' claims which, as Ms. Johnson
20 noted this morning, really do go to all aspects of prison
21 administration. Try to distill -- try to identify the claims
22 that were actually tried by the classes, determine whether the
23 plaintiffs offered sufficient proof of systemic and persuasive
24 constitutional violations on any one of those claims that were
25 tried, and then help the court sort out a remedy, if one is

1 necessary, that avoids dragging the court down into what the
2 Fifth Circuit has called the minutiae, becoming enmeshed in the
3 minutiae of prison administration.

4 I'm going to talk specifically about the mental health
5 and medical subclass, and I'll also talk about the isolation
6 class. But I think -- and I'm not going to go back over the
7 deliberate indifference standard but do want to highlight the
8 underpinnings of that standard. Why is it such a strict
9 standard?

10 Well, there's two reasons. First, this case deals
11 with prisoners and prisoners' complaint about their conditions
12 of confinement. Prisoners have to be confined because they
13 have committed crimes that require their imprisonment for the
14 protection of the public. So the question is not community
15 standards, it's not professional standards or best practices.
16 The question is elemental decency and whether the jailers when
17 they are brought into court are meeting that standard.

18 And the second underpinning is what we've been
19 discussion all day long that managing a prison is an enormously
20 trying and complex task. And before the court steps into that
21 task, it has to have clear and specific remedies it can impose
22 if it finds that there's a constitutional violation.

23 I do want to talk just briefly about the standards
24 that do not govern his case, and these are deviations from
25 prison policies. We've heard a lot about prison policies.

1 We've heard concessions that they are good policies. We've
2 heard proof that they are tied to national correctional --
3 national commission on correctional health care standards and
4 ACA standards, and then we've heard testimony that -- from
5 experts that those policies are being deviated from.

6 The Supreme Court has said that prison policies
7 naturally do not create rights for inmates. They cannot
8 demonstrate an Eighth Amendment violation by demonstrating that
9 despite best efforts, the commissioner, the warden, and the
10 medical staff do not always achieve the policy requirements.
11 Contracts terms are not the standard. Continuous quality
12 improvement efforts. Again proof that prison officials are
13 engaged in a robust monitoring effort is not proof that they're
14 violating the Eighth Amendment.

15 Your Honor, I do want to turn now to the claims, and
16 with your permission I will approach.

17 (Document Tendered to the Court)

18 MR. BENTLEY: So what we did on the defense side when
19 you asked us to try to distill these claims into something
20 manageable, we went back to Your Honor's published opinion in
21 2012 which certified this class. And what I provided you --
22 and I'm not going to walk through every one of these claims
23 that Your Honor identified as what we took to be the claims as
24 understood by everyone in September of 2015.

25 I'm going to talk -- the ones that were highlighted

1 this morning, I'm going to walk through those and we can
2 address the others in posttrial briefing. But I want to start
3 by confronting the suggestion that the Mississippi Department
4 of Corrections did not put on any proof to rebut the
5 testimony -- the opinion testimony of the plaintiffs' experts,
6 which is really what the medical case and mental health care
7 case comes down to.

8 Your Honor heard from five witnesses, Dr. Kim -- six
9 witnesses: Dr. Gloria Perry, the chief medical officer.
10 Dr. Kim Nagel, whose deposition testimony is in the record.
11 He's the chief psychiatrist. Nurse Practitioner Evelyn Dunn,
12 who is the chief psychiatric nurse practitioner at East right
13 now. Dr. Patrick Arnold. And two nurses, all whom testified
14 about the current delivery of care at East Mississippi
15 Correctional Facility.

16 And, notably, Dr. Nagel in his deposition said, of
17 course, there were two years of rockiness when we came in after
18 Dr. Reddix's firm was booted out. But changes have been made.
19 There's been a steady course of improvement.

20 Plaintiffs said we didn't introduce a single document.
21 Well, the plaintiffs introduced all the documents that we would
22 have relied on and much more, including the CQI reports and
23 thousands of pages of medical record. And this is important,
24 Your Honor. Thousands of pages of medical records that show
25 continuous ongoing contact by patients with their doctors and

1 medical providers in this prison.

2 There's simply no proof in these medical records that
3 anyone is indifferent to the conditions that the inmates are
4 experiencing at this facility.

5 Finally -- and this goes to what I take to be a pretty
6 significant concession from plaintiffs, that their remedy in
7 this case, as they have said to Your Honor, is not -- they did
8 not offer Your Honor any help with what to do, assuming there's
9 a violation. They said the remedy on staffing is to direct
10 MDOC to a point -- an expert to conduct a staffing analysis.
11 The remedy on policies is to direct MDOC to hire an expert to
12 review policies and make recommendations about changes. The
13 remedy on continuous quality improvement is to appoint an
14 expert and let them look at an implementation system and direct
15 MDOC if one is required to implement any changes.

16 This is a concession that the plaintiffs -- that was
17 their job. That was their expert's job was to come into this
18 court, identify deficiencies and if there are any deficiency
19 identify remedies. They have not done that, and the fact that
20 they are asking this court to do that for them simply
21 demonstrates that they have not satisfied their burden under
22 the Eighth Amendment because these things are intertwined.

23 The court cannot know if the isolated incidents that
24 it has heard about or that the experts have identified are
25 evidence of systemic and pervasive indifference without knowing

1 whether the prison is adequately staffed. And there's been no
2 proof, no proof, that it is inadequately staffed on the medical
3 and mental health side or any other side, for that matter. And
4 I want to go directly to the staffing point.

5 The only evidence of staffing analysis at this prison
6 is evidence that MDOC itself did an analysis in the competitive
7 bid process, and MDOC determined that 43 medical and mental
8 health care staff would be the minimally sufficient number to
9 serve this prison population. Working with its vendor,
10 Commissioner Hall, Dr. Perry, Centurion have approved 52
11 full-time positions at this facility. Over eight above the
12 minimal staffing requirements. They've figured out a way to do
13 that with no additional costs to the state.

14 And 48 -- you heard testimony that 48 of those
15 current -- those authorized positions are filled. So the proof
16 as it stands today is that staffing is 113 percent of the
17 minimally sufficient number at that facility, and that's just
18 filled positions.

19 There's also testimony in the record by Dr. Nagel. I
20 would encourage you to read his deposition at pages 27 through
21 35 that, in his opinion, as of April 2017 he did have
22 sufficient mental health care staff to care for the population.

23 There's testimony by Nurse Townsend, a nurse that
24 works at East Mississippi or did work at East Mississippi. Her
25 deposition is in the record, and I would encourage you to look

1 at pages 17 and 18 where she testifies that in her experience
2 the nursing numbers are sufficient to provide the care that
3 nurses are required to provide.

4 The second thing that was focused on this morning and
5 that has been focused on roundly at trial is what's been called
6 the sick call process. This is the process by which inmates
7 access care when they have episodes or acute situations that
8 need to be addressed. The plaintiffs' proof on this was 19
9 inmates who testified, some of whom had no concerns at all
10 about the sick call process. Some did. That's not surprising.

11 Experts who offered opinions about the process as it
12 existed in 2016, and CQI data, which, of course, based on the
13 small sample size shows some fluctuation, but also shows that
14 MDOC is monitoring the sick call process and making
15 improvements where required.

16 Now, what was the defendants' proof? Dr. Arnold
17 testified that 150 to 200 inmates are seen every week in the
18 clinic through the sick call process. That's not deliberate
19 indifference. That's delivery of care as required in the
20 judgment of medical professionals. And Dr. Arnold testified
21 that as far as he knew, the nurses and doctors and nurse
22 practitioners at that facility were caught up on the sick call
23 requests.

24 And when there are delays -- remember this, Your
25 Honor. The CQI data that you've been shown, 24 hour triage and

1 seven day requirement to be seen by a provider, if someone is
2 seen in 25 or 26 hours, that's noncompliant pursuant to the
3 policy. That's not deliberate indifference. If someone is
4 seen in eight, nine or ten days instead of seven, that's
5 noncompliance under the policy. But that's not deliberate
6 indifference.

7 And as Dr. Arnold testified, the reason that someone
8 may not fall within the seven-day period is that if the system
9 gets overwhelmed -- and in that case medical professionals are
10 making medical judgment about which cases have to be
11 prioritized and which cases are nonurgent and that can be seen
12 immediately outside of a seven-day period but certainly no way
13 approaching the constitutional requirement that an inmate
14 request for care be ignored or mistreated.

15 The third thing that was focused on this morning and
16 has been focused on at trial is what's called the pill call
17 process, the medication administration process. And the
18 plaintiffs' proof on this, again, is inmates, some of whom
19 testified they had misses in medication for various reasons,
20 human error by nurses, no shows or refusals by inmates, and
21 some of whom inmates testified are -- raised no issue at all
22 with medication administration.

23 And then you had an expert, Ms. LaMarre, who testified
24 that in her opinion in 2016, policies were being deviated from,
25 and the gaps in -- the periodic gaps in medication

1 administration were -- based on her sampling were not meeting
2 community standards.

3 Your Honor, no one denies that in a prison health care
4 system of this nature there will be interruptions in medication
5 because of lockdowns or no shows or human error. Dr. Arnold
6 testified that there are 3,000 doses of medication administered
7 at this facility every day. That's over 1 million doses a
8 year. Of course there will be periodic interruptions. There
9 would be in any mental health care system that's dealing with
10 that volume of medication and that number of patients who
11 require care.

12 But when interruptions do occur, there is followup.
13 Nurse Practitioner Dunn testified to Your Honor about her
14 followup practices if she has a patient that has missed three
15 or more -- three consecutive doses of medication. Nurse
16 Brookshire testified about the procedures she follows in the
17 pill call process. And in her view, that most every occasion
18 of missed medication is a refusal or a no show by an inmate.

19 Nurse Townsend in her deposition at pages 65 to 85
20 testifies at length about the medication administration
21 process, including her process for charting refusals and no
22 shows and following up with providers when a medication is
23 missed.

24 There is no proof in this record that any nurse, any
25 doctor, any nurse practitioner, any mental health provider, is

1 ignoring situations when an inmate misses his medication. The
2 proof is just the contrary, that they are responding to those
3 situations. The medical record confirms this, that inmates are
4 receiving significant amounts of medication as required in the
5 judgment of their medical professionals to treat their
6 condition.

7 And, again, I'm going to skip to the mental health
8 issue rather than going through all of the medical issues that
9 Your Honor identified. But suffice it to say that I do not
10 think there is any proof, certainly not proof sufficient to
11 meet the strict deliberate indifference standard on any one of
12 the eight medical claims that Your Honor identified.

13 So turning to mental health. The primary complaints
14 that I understood the plaintiffs to raise, the first one that
15 was discussed was lack of access to group or individual therapy
16 at East. Well, I have not -- first of all, Your Honor, I think
17 you saw a graphic this morning that showed in Unit 3 at least
18 25 percent of the inmates were receiving some form of group
19 therapy, and that is in addition to the medications that treat
20 and stabilize their conditions and to the individual meetings
21 that they have with their psychiatric providers.

22 Now, I have not found any cases that say under the
23 constitution an inmate who is otherwise stable on medication
24 and is otherwise receiving individual treatment by a
25 psychiatrist or a psychiatric nurse practitioner is entitled on

1 top of that to group therapy. I just have not seen those
2 cases. In fact, the cases are to the contrary.

3 If an inmate -- and these inmates in this case are,
4 and the medical records confirm it, if an inmate is receiving
5 medication to stabilize his condition so that he can function
6 in the prison -- and you've heard testimony that the vast
7 majority of inmates at East are stable, they're level of care C
8 as the agency defines them -- they are stable on their
9 medications and they can function within the prison. And I've
10 not seen any cases that say that if that is the case, there is
11 some additional burden on prison officials to provide
12 additional therapy that in the medical professional's judgment
13 may or may not be required.

14 Now --

15 THE COURT: What about being locked up in isolation?

16 MR. BENTLEY: Your Honor, I'll turn to the isolation
17 subclass because, again, this is an area where I think we are
18 stepped firmly into the area of prison reform. This subclass
19 challenges their placement. And as I heard Dr. Kupers testify,
20 that any confinement in isolation longer than 14 days is
21 inappropriate, in his medical opinion, and should be abolished
22 under the constitution. This class starts -- runs up against
23 the fundamental principle as is stated by the United States
24 Supreme Court and the Fifth Circuit "that a prison inmate does
25 not have a protectable liberty interest in his custodial

1 classification, and his disagreement with the classification is
2 insufficient to establish a constitutional violation." That's
3 *Neals v. Norwood*, 59 F.3d 530 (5th Cir. 1995).

4 But the fundamental principle here, Your Honor, is
5 that inmates cannot demand that they be housed in any
6 particular facility or any particular unit within the facility.
7 Cases have rejected claims by inmates -- I'll cite you one this
8 morning -- this afternoon "that long-term confinement to a
9 solitary housing unit violates the Eighth Amendment." *Tasby v.*
10 *Cain*. This is a recent decision from the Middle District of
11 Louisiana. The citation is 2017 WL 4295441. It was issued in
12 September. And that case involved an inmate who had been in
13 solitary confinement for 15 to 18 years. And he brought it --
14 a claim saying that this had caused deterioration of his mental
15 state that was -- amounted to an unconstitutional violation.

16 And the court determined in that case that the inmate
17 who had received continuous mental health treatment, who had
18 received medications that stabilized his condition, and was
19 otherwise appropriately seen by mental health professionals,
20 could not state a claim based purely on his placement in
21 segregated housing even if that placement caused mental
22 deterioration.

23 And so that's what we have in this case, Your Honor.
24 Yes, plaintiffs' own expert, Dr. Kupers, testified that 35 to
25 40 state systems used solitary housing unit for various

1 reasons. The federal government, Federal Bureau of Prisons,
2 uses it. Dr. Kupers acknowledged, and Warden Shaw testified,
3 that there are custodial security reasons that you would have
4 to place an inmate in long-term or short-term solitary
5 confinement.

6 And what happens to inmates that are on Unit 5 at
7 East? Nurse Practitioner Dunn testified at length about this.
8 She prescribes, monitors, and adjusts their medications on a
9 regular basis. She has individual meetings with every patient
10 on Unit 5 as required by their level of care, either 30 or 90
11 days. The inmates there have the ability to obtain more
12 immediate care, if they need it, through the sick call process,
13 and there is now an acute mental health unit where she can
14 use -- transfer an inmate to be stabilized if that becomes
15 necessary.

16 Again, that's not necessary in the vast majority of
17 cases, even those on isolation. The inmates are stable.
18 They're taking their medication. They are seeing their
19 therapist, and they are -- Mr. Pickering, the mental health
20 professional, testified at length that even when an inmate is
21 placed on Unit 5 for custodial reasons, he receives regular
22 rounds from a mental health professional. The opportunity for
23 private meetings if, in the inmate's judgment and the mental
24 health professional's judgment, is appropriate -- and Dr. --
25 Mr. Pickering, I'm sorry, testified at length about the

1 deescalation process to avoid unnecessary uses of force on
2 inmates at East. And I think he said that in his view
3 90 percent of the time the deescalation effort was successful
4 and use of force was not required.

5 So the proof is that -- when you turn to Unit 5, that
6 inmates do receive continuous mental health care. This proof
7 is in the testimony here. It's in the medical records before
8 the court. And this challenge comes down to a bare request
9 that the court eliminate a widely used and custodially
10 appropriate condition of confinement which is segregated
11 housing units. I do not think this is the proper forum for
12 that sort of bare prison reform claim, and neither did the
13 court in *Tasby v. Cain* in the Middle District of Louisiana.

14 Finally I want to turn briefly, Your Honor, back to
15 remedies because I do think that the plaintiffs in the
16 prisonwide class action have a double burden in this case, that
17 is to demonstrate that there has been a violation of the
18 deliberate indifference standard, which is very strict, and to
19 demonstrate that there is a specific single-stroke remedy that
20 the court -- if there has been a violation that the court could
21 impose to remedy that violation.

22 And the standard is -- here is not mootness, which was
23 discussed this morning, and the *Gates v. Cook* case from the
24 Fifth Circuit in 2004 was cited. That involved a case where a
25 district court had made an initial determination that the

1 constitution had been violated, and on appeal the agency argued
2 that in the interim their efforts had mooted the injunctive
3 relief ordered by the court.

4 That is not what we have here, and the plaintiffs
5 cannot flip their burden onto the department. What we have
6 here is plaintiffs still attempting -- and we don't think they
7 can do it -- but attempting to meet their strict burden of
8 proof. Certainly there is no burden of proof on the defendants
9 in this case.

10 But their burden again requires not just proof of
11 deliberate indifference but identifying for this court a
12 single-stroke remedy like the remedy imposed in the recent
13 Fifth Circuit decision of *Yates v. Collier* that we discussed on
14 judgment -- motion for judgment as a matter of law. In that
15 case, the court identified a single-stroke remedy -- lowering
16 temperatures in a unit that was overheated -- that prison
17 officials could understand and implement and that the court
18 could enforce, if necessary.

19 Here we have no remedy offered at all other than
20 further proceedings: The appointment of experts, paid for by
21 MDOC to undertake analysis that may confirm that MDOC is
22 compliant with the constitution. That is not a single-stroke
23 remedy. That is a very, very, very late request to bifurcate
24 these proceedings, to turn this into a liability followed by a
25 remedy proceeding.

1 That is not how this case was tried, Your Honor. This
2 case was tried as a combined proceeding at the end of which
3 plaintiffs are asking Your Honor to retire to chambers and
4 draft an injunction that addresses the complaints that they
5 have. The injunction that they've asked you to draft is to
6 order further proceedings, appointment of further experts that
7 inevitably they'll probably find some reason to disagree with,
8 and the proliferation of these proceedings well beyond today or
9 any point at which you might issue an injunction.

10 It's not appropriate to do that at this late stage,
11 and it's not the type of relief required by Rule 23, which is
12 again a precise single-stroke remedy that this court can
13 implement, the prison officials can understand, and that this
14 court can enforce later.

15 Your Honor, I want to conclude by briefly returning to
16 the *Hughes v. Judd* decision which I cited at the beginning of
17 my discussion about what do you do in a case like this where
18 conditions inevitably change. And in that case, the court
19 found that conditions had changed and it sized up the proof and
20 found no evidence that simply because -- that the changes were
21 made simply -- as an effort to avoid liability or that they
22 would disappear after this litigation ended.

23 And I think the same is true here. Of course, you've
24 heard proof that the prison has changed. The prison -- the
25 department has brought this facility -- Commissioner Hall,

1 Warden Shaw, and others have brought this facility out of a
2 situation where it was dominated by Christopher Epps and his
3 confederate, Dr. Carl Reddix, into a situation where it is
4 greatly exceeding constitutional minimums. And there is no
5 proof that that's been done as some sort of trick. It's been
6 done over the steady course of two, two and a half years, and
7 it's going to continue. I think all the proof is to that
8 effect.

9 So the plaintiffs have not carried their burden in
10 this case, Your Honor. They have not carried their burden
11 under the Eighth Amendment to demonstrate to you that inmates
12 at East are subject to cruel and unusual punishment, either in
13 the delivery of health care or in their conditions of
14 confinement. And they've not satisfied their burden to
15 demonstrate that Your Honor has any remedy, even if there are a
16 few things that you might think should be remedied. I just --
17 there's no proof, no suggestion, of how you might do that.

18 For these reasons, we think the only option the court
19 has is to enter a judgment for the Mississippi Department of
20 Corrections finding that there is no violation of the United
21 States Constitution.

22 THE COURT: All right. Thank you. All right. Ms.
23 Johnson, you don't have much time in rebuttal. How much do you
24 think you -- you've run over your time. How much do you think
25 I should give you to finish up?

1 MS. JOHNSON: Your Honor, if you would be so generous
2 to give me 10 to 15 minutes.

3 THE COURT: That's too much.

4 MS. JOHNSON: Okay.

5 THE COURT: I'll give you eight minutes.

6 MS. JOHNSON: Yes, sir, Your Honor.

7 THE COURT: All right. That will give you until 17
8 minutes of 1:00.

9 MS. JOHNSON: Thank you, Your Honor.

10 REBUTTAL ARGUMENT FOR THE PLAINTIFFS

11 MS. JOHNSON: First, Your Honor, I'd like to start
12 with defendants' discussion of plaintiffs' nutrition claim.
13 Defendants offered no evidence to rebut our expert witness,
14 Diane Skipworth, regarding the nutrition claim.

15 THE COURT: Excuse me. Skip the nutrition. I'm
16 already going to find for them on the nutrition claim.

17 MS. JOHNSON: Yes, Your Honor. The next claim in
18 which Mr. Siler discussed was the environmental and sanitation
19 claim, and I think that there's been some confusion as to the
20 scope of that claim. There is a subclass in that claim that
21 applies to the Housing Units 5 and 6, and particularly the
22 lighting, maintenance, sanitation, and fires that relate to the
23 conditions.

24 Mr. Siler's discussion of polished hallways and gyms
25 and the like are irrelevant to that claim to the extent that

1 they are outside of Housing Units 5 and 6. The environmental
2 and sanitation claim does not apply to the prison as a whole.
3 I just wanted to make that clarification.

4 Further, Your Honor, as it relates to solitary, Mr.
5 Siler and Mr. Bentley have misconstrued plaintiffs' request as
6 a per se violation or categorical bar of all use of solitary.
7 And as I indicated this morning, that's not what plaintiffs
8 have asked, and there have been instances in other states in
9 other courts where they have found that solitary confinement
10 can -- the conditions in solitary can constitute an Eighth
11 Amendment violation.

12 One of those cases includes *Ruiz v. Johnson*,
13 37 F.Supp. 2d 855, out of the Southern District of Texas.
14 *Coleman v. Wilson*, 912 F.Supp. 2d 975, from California. And
15 just last week, Your Honor, the Eleventh Circuit in a case
16 found that prolonged placement in solitary confinement can
17 violate the Eighth Amendment. That case is *Quintanilla v.*
18 *Bryson*. It's number 17-14141 (11th Cir.), and that decision
19 was issued on April 5th.

20 Next, Your Honor, related to the use of force that
21 Mr. Siler also discussed, there is a case out of the
22 Eleventh Circuit that has -- for the Eleventh Circuit that
23 has -- for the Eleventh Circuit found that "the district court
24 did not err in concluding that the policy permitting
25 nonspontaneous use of force with chemical agents against

1 mentally ill prisoners violates the constitution." That case
2 is *Thomas v. Bryant*, 614 F.3d 1288.

3 Your Honor, defendant has misconstrued some of
4 plaintiffs' claims. And as I said, as the court looks at this
5 case, it has to consider the Mississippi Department of
6 Corrections has elected to place the seriously mentally ill at
7 EMCF and the considerations and risk of harm associated with
8 that population in making its determination.

9 Your Honor, as it relates to the medical and mental
10 health staffing, Mr. Bentley pointed out that the staffing
11 numbers were developed during a competitive bid process. Well,
12 Your Honor, as a result of that competitive bid, the staffing
13 numbers were 64, but the current contractual staffing numbers
14 are 44.1.

15 And, Your Honor, as you heard Dr. Perry testify,
16 there's nothing that prevents Centurion from decreasing the
17 staffing at the conclusion of this trial. And, in fact, Warden
18 Shaw also testified that to the extent the correctional
19 officers have been increased, there's nothing that guarantees
20 that those officers will remain in place next week, next month,
21 or at any time in the future, and we contend that the
22 inadequate staffing constitutes a substantial risk of harm to
23 the prisoners at EMCF.

24 THE COURT: Do you have any explanation as to why the
25 contract was apparently negotiated on a higher number and a

1 lower number of employees has been used?

2 MS. JOHNSON: The testimony from Dr. Perry, Your
3 Honor, is that the department did not want to pay -- did not
4 want to pay for the 64 staffing. It would have been an
5 additional 88 cents per prisoner, and the department, after
6 awarding the contract, stated that it would not. And as Your
7 Honor may recall, there was a series of e-mails and
8 negotiations of that staffing that ultimately led it to the
9 44.1 number pictured on the screen, if Your Honor may recall.

10 THE COURT: But was the cost of the contract reduced
11 or is the state paying full contract price for 60 employees and
12 only getting 40?

13 MS. JOHNSON: The state -- the price that the state
14 pays is based on 44 positions at EMCF, even though it awarded
15 the contract based on Centurion's bid that 64.6 positions were
16 needed at EMCF to provide the appropriate basic care.

17 THE COURT: All right. I remember those figures, but
18 I did not understand them.

19 MS. JOHNSON: Your Honor, in closing I would just ask
20 the court to consider the plaintiffs' seven claims and that the
21 substantial risk of harm that exists at EMCF we have discussed
22 and we will more fully provide to the court. To the extent
23 that defendants urge that we have not provided the court with
24 remedies, the court is able to ask the parties, once a
25 liability finding is made, to look at remedies. They can

1 appoint a monitor as has been done in several PLRA cases,
2 including cases that have -- regarding the Walnut Grove
3 Correctional Facility, the Forrest County Juvenile Detention
4 Center and the Henley-Young Juvenile Justice Center. It is
5 typical for judges to appoint a monitor or use a subject matter
6 expert.

7 Your Honor, I'm not trying to run EMCF. I don't have
8 a desire to. But I do recognize that it needs to be operated
9 by someone with the expertise to reduce the substantial risk of
10 harm that currently faces all of the prisoners who are housed
11 there. Thank you, Your Honor.

12 THE COURT: All right. Thank you. If the lawyers
13 would like to provide the court with a list of cases which you
14 have cited here today in your arguments with a one-sentence
15 synopsis of what you think the case means or at least what you
16 think you want to get out of the case, you may do by Friday of
17 this week.

18 All right. Is there anything further that the court
19 needs to address this morning? I will -- I'm planning on
20 writing a written opinion. It will take me several days to get
21 that done. I do not need briefs on this. I think both sides
22 have done an ample job of briefing the issues, and it's just a
23 matter that the court's going to have to pull a substantial
24 record into an opinion. I know that each side will be happy to
25 do that for me, but I guess I had better do it myself.

1 Is there anything further that the court needs to
2 address here today?

3 MS. JOHNSON: Your Honor, we would just ask that the
4 record be held open until Friday to allow the parties to
5 complete the deposition designations and submit those to the
6 court.

7 THE COURT: That's fine. Yes.

8 MR. BALABAN: Good afternoon, Your Honor, I began the
9 day and it looks like I'm going to be ending it. I would like
10 to be heard briefly with regard to posttrial briefing, if we
11 could, Your Honor.

12 THE COURT: No, sir.

13 MR. BALABAN: Thank you Your Honor.

14 THE COURT: I don't need any more briefing. Thank
15 you. All right. If there is nothing else for the court, we
16 will stand in recess and I will have an opinion as soon as I
17 can get it completed.

18 (Trial Concluded)

CERTIFICATE OF REPORTER

I, CHERIE GALLASPY BOND, Official Court Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true and correct transcript of the proceedings had in the aforementioned case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 9th day of April, 2018.

s/ *Cherie G. Bond*
Cherie G. Bond
Court Reporter